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INTERNATIONAL REGULATIONS OF THE FISHERIES  
ON THE HIGH SEAS

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## DISCRIMINATION BETWEEN HIGH SEAS AND TERRITORIAL WATERS.

As used in defining the jurisdiction of admiralty courts, the term high seas implies all the waters of the ocean, and all connecting arms and bays, "exterior to low-water mark;" but in international law and in the sense employed in this paper, the term is not so broad, and it signifies only so much of the ocean as is outside the territorial jurisdiction of maritime states, and is what might be called the extraterritorial seas. It is now well established that the exclusive jurisdiction of a maritime nation covers only a narrow belt or margin of the littoral waters; beyond is the open ocean, the high seas, free to all for purposes of navigation and fishery, incapable of being monopolized by any state or people.

This principle in law is of relatively modern recognition. In the middle ages strong maritime powers made claims to sovereignty over considerable portions of the seas, which to some extent may have been justified by their maintenance of protection against piracy in those waters. At the height of her power the Republic of Venice was recognized as sovereign over the Adriatic Sea, and likewise Genoa over the Ligurian. France arrogated to herself a considerable stretch of the seas adjacent to her coasts. By his celebrated decision of arbitration on May 14, 1493, and by his approval of the treaty of Tordesilhas in the following year, Pope Alexander VI apportioned the Indian seas and the Pacific Ocean between Spain and Portugal. For three centuries Denmark claimed jurisdiction over the fisheries in the seas between Norway and Iceland; by treaties made in 1500 and 1523 this claim was acquiesced in by England, and English fishermen and traders in those waters were required to obtain licenses from the King of Denmark. With development in maritime strength, Great Britain claimed sovereignty over all the seas in communication with those surrounding her coasts, and in the seventeenth century fishermen of Holland and other countries were obliged to secure licenses from that Government, the Dutch in 1636 paying £30,000 for this purpose. Immediately previous to the Revolutionary war considerable portions of the Newfoundland banks and of the St. Lawrence Gulf were monopolized by Great Britain and her colonies, and at the conclusion of that war only the determined protest of the United States prevented the British Government from exercising jurisdiction thereover.

Although surrendered slowly and reluctantly, these extravagant claims of the great powers have given way to a just consideration of the rights of weaker nations. With development of commerce, the modern conception of the freedom of the seas, first formally set forth in 1609 by Grotius, that master builder in the science of international jurisprudence, was gradually established, and the limit of territoriality of a maritime state became restricted to a narrow margin surrounding her external seacoast. Within this limit the authority of a nation is paramount and exclusive, except as it may be affected by treaty rights and subject to peaceable passage by ships of other nations. Grotius, however, although restricting the authority of a maritime state to a limited distance seaward, gave only an indefinite idea as to the extent of this marginal belt, stating that it must be a reasonable area and bear a proper relation to the adjacent land.<sup>a</sup> Difference of opinion as to the precise limit has been great. Claims have been made now and again and by various authorities for 100 miles,<sup>b</sup> for 60 miles,<sup>c</sup> for two days' sail,<sup>d</sup> as far as the bottom can be found with the lead line,<sup>e</sup> and for as much as can be seen from the shore on a clear day.<sup>f</sup> Nearly one hundred years after the publication of Grotius's "*Mare liberum*," the learned yet practical Bynkershoek made the first statement of the present rule which defines the marginal waters as extending as far as the riparian state is able to exercise jurisdiction from the shore, the maxim in which this doctrine is tersely expressed being "*Terræ finitur potestas ubi finitur armorum vis.*"<sup>g</sup> This seemed a just and practical solution of the controversy, and succeeding publicists adopted the attractive formula.

The modern conception of international law and the just relations and jurisdictions of nations had its birth and made its greatest progress in the seventeenth and eighteenth centuries, after the introduction of firearms and before the great development in modern artillery. Since authority over the marginal waters was exercised by means of cannon, it was natural to assume the distance of a cannon shot as the limit of jurisdiction. The extreme limit of cannon range being then about 3 marine or geographical miles, this distance from low-water mark became recognized as the extent of the marginal belt

<sup>a</sup> De Jure Belli ac Pacis, II, ch. 3, sec. 3.

<sup>b</sup> Cœpolla, De servitutibus prædiorum urbanorum, ch. xxvi, no. 14.

<sup>c</sup> Bodin, De Republicâ, lib. I, ch. x.

<sup>d</sup> Locenius, De Jure Maritimo, ch. IV, sec. 6.

<sup>e</sup> Valin, Commentaire sur l'Ordonnance de la Marine du mois d'aout 1681. Paris, 1761, ch. v, p. 687.

<sup>f</sup> Rayneval, Institution du Droit de la Nature et des Gens, lib. II, ch. IX, ch. x.

An old Scottish law recognized the jurisdiction of that country as extending seaward to the visible distance from the shore. Mackenzie calls attention to the grim sense of humor entertained by James V of Scotland (1513-1542): "In the time of K. James the 5th, the Hollanders having only a verbal licence to fish at 28 miles distance cam neere the shore into the mouth of the Furth of Edenborough, and ther fished in despite of the Kings comand. Then the King sent out men of warre and took so manie of them that he sent a barifful of their heads into Holland with their names fixed to their foreheads upon cards." (MS. in Public Records Office. State Papers, vol. CLII, no. 63; quoted in Mackenzie's History of the Outer Hebrides, p. 304. Paisley, 1903.)

<sup>g</sup> Bynkershoek, De Domino Maris, ch. II; Quæstionum Juris Publici, 1737, lib. I, ch. 8.

among those who preferred a distinct and uniform distance to a general and somewhat indefinite one. It was specifically acknowledged in the maritime regulations adopted by Tuscany in 1778, and in those of Genoa and of Venice in 1779; it was affirmed by Russia in 1787, by the United States in 1794, by Austria in 1803, and by various other nations at different dates. It was recognized in the convention of 1818 between Great Britain and the United States, in the fishery conventions between France and Great Britain of 1839 and 1867, in the convention of 1882 between Belgium, France, Denmark, Germany, Great Britain, and the Netherlands for the police of the fisheries in the North Sea, and in various other conventions, treaties, and arbitrations. Indeed, for many years the terms "maritime belt" and "the marine league" have been used interchangeably.

Objection to a universal recognition of the rule that territorial jurisdiction extends only 3 miles from land is made chiefly by Norway and Sweden. These states have never recognized the 3-mile limit as the confines of their territorial waters, and have never concluded nor acceded to any treaty setting forth that rule. By their municipal or national laws the limit has generally been fixed at 4 geographical miles. This was established in Norway by royal rescript of June 18, 1745, and has been affirmed repeatedly since then, especially in the early part of the last century.<sup>a</sup>

The Government of Spain has from time to time claimed exclusive jurisdiction within 6 nautical miles of her coasts and of those of her colonies. This claim was expressed in a royal cedula of December 17, 1774, which was supported by a royal decree of May 1, 1775, and by another of May 3, 1850, and was asserted as recently as August 4, 1874. But both Great Britain and the United States refused to accede to this pretension or to concede the extension of Spanish sovereignty beyond 3 littoral miles.<sup>b</sup>

Since harbors and small bays have more of the characteristics of territoriality than the open seas along the coast, it has been customary to recognize jurisdiction as extending over these within reasonable limits, even though they be not wholly within the 3-mile belt. But there is not at present any generally recognized standard as to what can be justly regarded as territorial bays when the width exceeds 2 marine leagues. Some authorities claim that the limit of exclusive jurisdiction is 3 miles from a line drawn from headland to headland,

<sup>a</sup> See p. 109 and 137.

<sup>b</sup> See letter of Lord Derby to Mr. Watson, December 25, 1874, *Foreign Relations of the United States*, 1875, p. 641, 649. In the language of Mr. Seward, it can not be admitted "that the mere assertion of a sovereign, by an act of legislation, however solemn, can have the effect to establish and fix its external maritime jurisdiction. This right to a jurisdiction of 3 miles is derived not from his own decree but from the law of nations, and exists even though he may never have proclaimed or asserted it by any decree or declaration whatsoever. He can not, by a mere decree, extend the limit and fix it at 6 miles because if he could, he could in the same manner, and upon motives of interest, ambition, or even upon caprice, fix it at 10, or 20, or 50 miles, without the consent or acquiescence of other powers which have a common right with himself in the freedom of all the oceans." (Letter to Mr. Tassara, Spanish minister, August 10, 1863.)

instead of a marine league from the shore following its sinuosities. The present tendency is to consider all bays less than 10 miles in width at the mouth as within the jurisdiction of the riparian state.

In the convention of 1839 between France and Great Britain, applicable to the seas lying between the coasts of the two countries, it was agreed that "the limits within which the general right of fishery is exclusively reserved to the subjects of the two kingdoms respectively are fixed (with the exception of those in Granville Bay) at three miles distance from low-water mark. With respect to bays the mouths of which do not exceed 10 miles in width, the 3-mile distance is measured from a straight line drawn from headland to headland." By a municipal law of June 7, 1832, Belgium had already adopted this rule.

The convention of 1882 signed by Belgium, Denmark, France, Germany, Great Britain, and the Netherlands, respecting the fisheries of the North Sea, recognized territorial waters as those "within the distance of 3 miles (geographical) from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks. As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles." And precisely the same language was used in the Anglo-Denmark convention of 1901 for regulating the fisheries in nonterritorial waters surrounding Iceland and the Faroe Islands.

The unratified Anglo-American fishery treaty of 1888 provided that the territorial jurisdiction of 3 marine miles "shall be measured seaward from low-water mark;" and after designating certain bays which should be considered as territorial waters, it set forth: "But at every bay, creek, or harbour not otherwise provided for in this treaty, such marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbour in the part nearest the entrance at the first point where the width does not exceed 10 marine miles."

While the tendency of international law is to restrict jurisdiction over large coastal indentations, there is no absolute rule in this respect. Chesapeake Bay and likewise Delaware Bay are recognized as parts of the territory of the United States.<sup>a</sup> Great Britain claims territorial jurisdiction over Conception Bay in Newfoundland,<sup>b</sup> which is of an average width of 15 miles; also over Bristol Channel,<sup>c</sup> an arm of the sea about 80 miles long and from 5 to 45 miles wide.<sup>d</sup> France claims the Bay of Cancale, which is 17 miles wide, and also a large portion of Granville Bay. Other territorial bays in Europe are: White Sea in Russia, Zuider Zee in Holland, and the Frisches Haff, the Kurisches Haff, Bay of Stettin,

<sup>a</sup> Wharton, *Digest of International Law*, 2d ed., sec. 27 and 28.

<sup>b</sup> *Direct United States Cable Company v. Anglo-American Telegraph Company* (1877), L. R. 11 App. Cases, 394.

<sup>c</sup> *Queen v. Cunningham* (1859), Bell's Crown Cases, 86.

<sup>d</sup> See also page 136, with reference to her claim of jurisdiction over Moray Firth, which is about 85 miles across at the mouth.

and Jade Bay in Germany. Norway claims as territorial waters many of her great fiords or gulfs, which are very wide at the mouth and extend far inland; and she especially reserves to her fishermen the very important cod fishery prosecuted by 30,000 men each spring in West Fiord and about the Lofoten Islands, this exclusive right being founded in immemorial usage.

The situation was well expressed by Lord Blackburn in 1877 in the case involving jurisdiction in Conception Bay: "It does not appear that jurists and text writers are agreed what are the rules as to dimensions and configurations which, apart from other considerations, would lead to the conclusion that a bay is or is not a part of the territory of the state possessing the adjoining coasts; and it has never been made the ground of any judicial determination." The question has to be considered in each case with regard to international laws and usages affecting that particular body of water; but nations are inclined to view with jealousy this extension of territoriality, and the burden of establishing the usage is upon the nation claiming under it.

While the Supreme Court of the United States has held<sup>a</sup> that the waters of the Great Lakes are "high seas" within the meaning of a certain section of the criminal laws,<sup>b</sup> yet those waters are not high seas as the term is used in international law and in this paper. The Great Lakes are wholly territorial, and the waters on either side of the international boundary line are under the exclusive jurisdiction of the respective countries.

#### RESTRICTION OF FISHERIES ON THE HIGH SEAS.

Although it is customary to speak of the "freedom of the seas," we must not understand that this signifies lawlessness. The freedom of the seas simply implies perfect freedom of navigation and fishery for vessels of all nations without restriction from any foreign government. As regards the vessels flying its flag, each sovereign state has as much authority on the high seas as within its territorial waters, and may enforce among them any regulations or restrictions it may deem advisable. Consequently the municipal law of a power is sufficient for regulating those fisheries on the high seas prosecuted only by subjects of that nation. Prominent instances of the exercise of this authority are found in the old herring regulations of England and of Scotland, in the Newfoundland seal-fishery laws of 1879 and 1892, the American mackerel law of 1887, the Australian pearl-shell regulations of 1888 and 1889,<sup>c</sup> and in regulations established by many of the continental countries. Although these municipal laws are operative on the high seas, they are not international regulations, which signifies something more than the independent legislation of an individual state, affecting its subjects only.

<sup>a</sup> *United States v. Rogers* (1893), *United States Reports*, vol. 150, p. 249.

<sup>b</sup> Section 5346 of the Revised Statutes, giving the federal courts jurisdiction over certain crimes committed upon American vessels "on the high seas and out of the jurisdiction of any particular state."

<sup>c</sup> The municipal regulations for the pearl fisheries of the colony of Western Australia extend over an area of the high seas estimated at 700,000 square miles.

In relation to the subjects of another sovereign power the situation is quite different, for no single nation is allowed to interfere on the high seas with the vessels of another nation without previous agreement. Indeed, so liberally does international law guard the coast fishermen that even in war they are humanely exempted from capture while engaged in their legitimate pursuit. And a municipal law has no effect on the high seas except on the vessels flying the flag of that particular nation.

Where vessels of several powers are concerned, it is a hardship and exceedingly unjust for one government to enforce restrictive regulations among its own fishermen without concurrent action by other governments, for this makes a hurtful monopoly in favor of foreigners. The principal effect of such action is usually to transfer the nationality of the operations from the government enforcing the restriction to one under which greater freedom is enjoyed. Striking instances of this may be found in the transfer of pelagic fur-sealing vessels from the American to the British flag when the United States interdicted pelagic fur sealing in 1886, and also in their transfer to the Japanese flag after both America and England agreed upon the Bering Sea regulations in 1893. By united action of all the nations interested in a particular fishery, however, regulations may be established and enforced on the high seas as effectively as though that fishery were prosecuted within territorial waters. Hence arises the importance of concurrent action among the powers interested when such regulations are found necessary, and such action is obtained through international conventions and agreements. These conventions recognize the right of all nations to fish in the seas beyond the territorial waters, but for their mutual benefit each one agrees to restrict its own subjects by regulations to be observed by all alike. Such regulations do not apply to the subjects of nations which are not parties to the agreement and do not restrict their fishing in any place or in any manner.

The number of instances in which nations have united or even concurred in regulating fisheries on the high seas is not large. Fortunately for the length of our paper, the much discussed "fisheries question," respecting the rights and privileges of the British provinces and of the United States on the north-eastern coast of America, does not relate to the high seas, although it bears materially on the limit of maritime jurisdiction.

The first prominent attempt at international regulation of the fisheries was the Anglo-French convention of 1839, applicable to the English Channel and adjacent seas, which set forth the limits of exclusive jurisdiction in marginal waters and established regulations for preserving the oyster and other fisheries and for maintaining order among the fishermen. The regulations prepared in 1843 in accordance with the provisions of this convention were never satisfactory and have been of little effect. In 1867 an effort was made to revise them, and a convention was signed to this effect by representatives of the two nations; but this failed, owing to lack of confirmation by the French Government.

The North Sea convention of 1882, among Belgium, Denmark, France, Germany, Great Britain, and the Netherlands, was strictly for the police of the

fisheries and to prevent the destruction of property. As determined by the results accomplished, this is doubtless the most important of all international fishery regulations. In 1901 Denmark and Great Britain applied the provisions of this convention to their fisheries in the waters surrounding Iceland and the Faroe Islands.

The submarine cable convention of 1884 interdicted fishing in the vicinity of cables and cable ships. Strictly speaking, this has never interfered materially with fishery operations, but the convention is important in that the restriction on the fisheries has been agreed to by nearly every important nation.

The convention of 1899 between Sweden and Denmark authorized the subjects of each of these nations to fish in certain territorial waters of the other and also provided against the destruction of fishing gear operated in the waters between the two countries. In 1907 this convention was supplemented by a declaration that plaice under a designated length should not be caught or landed from the waters of the Cattegat or The Sound.

In all of the conventions noted the interests of the signatory powers were fairly mutual and the restrictions bore evenly on the subjects of the several nationalities. But in 1893 an international agreement occurred which was unique in that the interests of the powers were in absolute conflict. This was the Bering Sea arbitration between Great Britain and the United States, which was intended to restrict the scope of the pelagic fur-seal fishery, prosecuted almost exclusively by subjects of Great Britain, with a consequent and corresponding advantage in the yield on the Pribilof Islands, under the exclusive jurisdiction of the United States. Although the practical results of the regulations established by that tribunal of arbitration have been far short of what was expected, from the standpoint of international law this is the most important of all fishery agreements applicable on the high seas, owing to the numerous and lengthy arguments presented in the tribunal and the influence of their decision.

From the foregoing it appears then that the international fishery regulations operative on the high seas have been of two general classes, the one for preserving the resources and the other for the maintenance of good order among the fishermen and for preventing the destruction of property. To the former class belong the Bering Sea fur-seal regulations, and in some particulars the Anglo-French regulations of 1843, and the declaration of 1907 between Sweden and Denmark. All the remaining conventions and regulations are of the second class.

Aside from the submarine cable convention of 1884, which was confirmed by nearly every important nation, it appears that as regards the number of sovereign powers adhering to it, the North Sea convention of 1882 was the most general of all these international regulations, having received confirmation from Great Britain, France, Germany, Belgium, Denmark, and the Netherlands. Each of the remaining conventions and regulations applied to the subjects of

two governments only, of which in four instances Great Britain was one of the parties. Thus it appears that in the six important instances of international regulation or restriction of the fisheries on the high seas, Great Britain has been actively concerned in five; Denmark in four; France in three; Germany, Belgium, the Netherlands, and the United States each in two; and Sweden in one of them. The Greenland seal fishery restrictions of 1875-1877, enacted by Denmark, Great Britain, the Netherlands, Norway, and Sweden, differ from international regulations in that they were not the result of a formal convention or agreement, but were based on analogous municipal enactments by these powers acting in concert. These restrictions were for the purpose of preventing the exhaustion of the seal herds in the waters about Jan Mayen Island and off the eastern coast of Greenland, a purpose which they have failed signally in accomplishing. Each of these conventions, agreements, and regulations will be considered separately.<sup>a</sup>

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<sup>a</sup> In addition to the international agreements respecting the fisheries on the high seas, there have been very many treaties, conventions, declarations, etc., for regulating those prosecuted in territorial waters on the frontiers of bordering states, of which the following is only a partial list:

- 1839, April 19. Belgium and the Netherlands (article 9).
- 1840, April 5. France and the Grand Duchy of Baden.
- 1843, May 20. Belgium and the Netherlands, for the enforcement of article 9 of the convention of April 19, 1839.
- 1849, February 9. Prussia and the Grand Duchy of Luxemburg.
- 1856, December 2. France and Spain, respecting the fisheries in the Bidassoa River (abrogated).
- 1866, May 26. France and Spain, respecting the fisheries in the frontier rivers (Nive, Garonne, Signe, etc.).
- 1880, December 28. France and Switzerland, respecting the fisheries in the frontier waters.
- 1882, April 19. Belgium and the Grand Duchy of Luxemburg.
- 1882, May 6. Belgium and the Netherlands.
- 1882, November 8. Italy and Switzerland, on the fisheries in the bordering waters.
- 1883, August 9. Austria-Hungary and Italy, regulating the fishery in Lake Garda.
- 1884, April 3. Belgium and the Netherlands, modifying the regulations of May 20, 1843.
- 1885, June 30. Germany, Switzerland, and the Netherlands, for regulating the salmon fishery in the Rhine.
- 1886, February 18. France and Spain, respecting the fishery in Bidassoa River (modified January 19, 1886; September 20, 1888; October 4, 1894; and December 17, 1898).
- 1887, May 18. Switzerland, the Grand Duchy of Baden, and Alsace-Lorraine, respecting fisheries in the Rhine and its tributaries, including Lake Constance.
- 1891, March 12. France and Switzerland, concerning fisheries in the frontier waters.
- 1891, July 30. France and Switzerland, supplementary to the convention of December 28, 1880, respecting fisheries in the frontier waters.
- 1892, November 5. Prussia and the Grand Duchy of Luxemburg.
- 1893, July 5. Switzerland and the Grand Duchy of Baden, respecting the fisheries in Lake Constance.
- 1894, September 25. Switzerland and Baden, supplementary to the convention of July 5, 1893, respecting the fisheries in Lake Constance.
- 1897, July 3. Switzerland and Baden, concerning the fisheries in lower Lake Constance.
- 1898, July 8. Italy and Switzerland, concerning uniform regulations for the fisheries in the bordering waters.
- 1899, December 27. France and Switzerland, regulating the fisheries in the frontier waters.
- 1900, June 23. Russia and Roumania, respecting the fisheries in the River Pruth and in the lower Danube.

## ANGLO-FRENCH CONVENTION OF 1839.

The first successful attempt at international concert in regulating the fisheries on any part of the high seas resulted in the convention of August 2, 1839, between France and Great Britain, which applied to "the seas lying between the coasts of the two countries." This convention had its origin in the many disputes which had arisen with respect to the limits in which the subjects of each of the two kingdoms were permitted to fish, and especially in contentions which arose in 1837 and 1838 between French fishermen and those of the channel islands. The principal objects of this convention were stated to be: (1) To define the limits of territorial jurisdiction and exclusive fishery over the marginal waters of the two countries; (2) to provide regulations for preventing collisions among fishermen in the seas lying between the coasts of Great Britain and France; and (3) to settle the limits of the oyster fisheries lying between the Channel Islands and France.

By the ninth article of this convention, the right of fishing within 3 miles from low-water mark along the coasts of each country, respectively, was exclusively reserved to the subjects of that country; and in bays not more than 10 miles in width, the distance of 3 miles was measured from a straight line connecting the two headlands. The first of these provisions was in strict accordance with international law as then recognized. The second provision was novel, but a practical reason suggested it. It was considered that as 3 miles on each side of a bay less than 10 miles in width were unquestionably territorial, the interests of the proprietary nation within the bay were sufficient to determine its territoriality. This is by far the most important and lasting of all the provisions of the convention.

The eleventh article provided that with a view to preventing collisions which had occurred so frequently between the fishermen of France and those of Great Britain on the seas lying between the two countries, and to carry out other purposes of the convention, a commission should be appointed to prepare a set of regulations for guidance of those fishermen in the seas above noted.

In pursuance of the provisions of this article and of the convention generally, a code of regulations was prepared and confirmed by the respective Governments in June, 1843. The 89 articles agreed upon embrace many other subjects than those contemplated by the convention, and they constitute by far the most elaborate and complicated of all fishery laws applied to any part of the high seas. They are given in full in Appendix A (page 151 of this paper), and in this place we have room for only a brief résumé.

Articles 1 to 5 of the regulations define the limits within which the right of fishery is exclusively reserved to the subjects of the two countries, respectively. Articles 6 to 15 provide for the numbering, lettering, and licensing of all British and French fishing boats, and for the numbering and lettering of all buoys, floats, nets, and other implements of fishery. Articles 16 to 26 regulate

trawl fishing, defining the size of mesh, the length of beam, the weights of head-pieces and of ground rope, and the distance trawlers may fish from boats engaged in drift netting for herring or mackerel. Articles 27 to 35 regulate the herring fishery, defining the size of mesh in nets, the manner of shooting the nets by decked and undecked boats, respectively, and the distance at which these boats should remain apart when fishing. Articles 36 to 40 regulate the mackerel fishery in a manner somewhat similar to the preceding articles. Articles 41 to 44 regulate the fishing with bratt nets, trammel nets, and other set or anchored nets. Articles 45 to 49 regulate oyster fishing, establishing close time from May 1 to August 31, and from sunset to sunrise in the remaining months, and requiring the fishermen to throw back on the reefs all oysters measuring less than  $2\frac{1}{2}$  inches in length, and also all gravel, shell fragments, etc. Articles 50 to 54 define the flags, lights, and signals to be displayed by fishing boats. Articles 55 to 60 supplement several of the foregoing provisions respecting size of mesh in nets and noninterference with nets belonging to other fishermen. Articles 61 and 62 relate to the salvage of fishing boats, nets, gear, etc. Articles 63 to 75 provide means for enforcing these regulations by the cruisers and agents of the two countries, the summary proceedings before magistrates, and the fines and penalties that may be imposed. Articles 76 to 86 define the conditions and circumstances under which the fishing boats of either of the two countries are at liberty to come within the territorial limits of the other country. Article 87 forbids the shooting of herring nets earlier than half an hour before sunset, except where it is customary to carry on this drift-net fishing by daylight. Article 88 deals with fishing on the Sabbath day "within the fishery limits of either country." Sunday fishing outside of these limits was not prohibited by these regulations, and as the fifth article interdicted the subjects of one country from fishing within the limits of another country at any time, the purpose of this article is not clear. Article 89 authorizes the commanders of the cruisers and also all fishery officers of each of the two countries to enforce the above regulations.

These regulations were enacted into law in Great Britain (6 and 7 Vict., ch. 79), dated August 22, 1843, and in France by royal ordinance of June 27, 1846.

It is generally admitted that the terms of the convention of 1839, of the pursuant regulations of 1843, and of the legislative enactments adopted in connection therewith were defective and ambiguous. Owing to difference of opinion as to the limits in which they were applicable, as well as to their severe conflict with the fishery laws then operative in British territorial waters (Geo. I, ch. 18), the convention regulations were never enforced. It was claimed by some authorities that the words "the seas lying between the coasts of Great Britain and of France" should be construed strictly, and referred only to the English Channel; but it was held by others—and probably with greater reason—that this phrase comprised all the seas about the British coasts, including those off the eastern and even the northern coast of Scotland. And many of the

provisions respecting the modes and the times of shooting the drift nets, and the construction details of trawls, etc., would have been either futile or mischievous had they been enforced.

Some attempt was made to enforce the provisions relating to the numbering of fishing boats, and cruisers were occasionally sent among them to preserve order; but there was no serious attempt to enforce such regulations of the fisheries themselves as did not meet with the wishes and conveniences of the fishermen, except with respect to territorial limits and to the close season in the English Channel oyster fishery, the regulations of which were enforced for several years following 1852, at the instance of the French Government.

In 1866 the commissioners appointed to inquire into the sea fisheries of the United Kingdom reported respecting the convention act of 1843:

It is obvious that the majority of its regulations, so far as they affect methods of fishery and not matters of police, are either superfluous or impracticable or injurious, their evil tendencies being only neutralized by the circumstance that they are disregarded. And even were the provisions of the act requisite or expedient, the highest legal authorities are so completely at variance concerning the interpretation and the limits of the application of the act, that it must be regarded as an extremely defective piece of legislation.<sup>a</sup>

For the purpose of revising the convention of 1839 and the regulations of 1843, a new convention was signed at Paris on November 11, 1867. It applied beyond the territorial waters of both countries, "to the seas surrounding and adjoining Great Britain and Ireland, and adjoining the coast of France between the frontiers of Belgium and Spain."

The details of this convention were more definite and much less complicated than the regulations prepared in accordance with the convention of 1839. Instead of 89 articles there were only 42. The principal changes were removal of all restriction on the size of mesh and on the forms and construction of beam trawls, etc., and an extension in the termination of the oyster season from April 30 to June 15. Also an improvement was attempted in general supervision and in methods of enforcing the regulations governing the conduct of the fishermen. The articles of this convention are given in full in Appendix B (page 158 of this paper).

To carry into effect the provisions of the convention of 1867 was the principal intention of the British sea fisheries act of 1868 (31 and 32 Vict., ch. 45), which repealed the convention act of 1843. Reciprocal action in France failed, however, and the provisions of the new convention were never made applicable to French boats and fishermen. And the convention act of 1843 having been repealed by the sea fisheries act of 1868 (sec. 71), there was an absence of mutual regulations until 1877, when the provisions of the convention act of 1843 were revived by the fisheries act of 1877 (40 and 41 Vict., ch. 42, sec. 15) so far as regards French fishermen, "until the day when the convention of 1867 might be brought into operation by action of the French Government."

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<sup>a</sup> Report of the commissioners, p. LXXIV.

As a result of this legislative condition, while the provisions of the convention of 1867 were enforceable against British subjects by virtue of the act of 1868, it was necessary, when dealing with the offenses of French fishermen, to have recourse to the regulations drawn up in 1843 under the convention of 1839. Naturally this caused much confusion, and the British sea fisheries act of 1883 (46 and 47 Vict., ch. 22) repealed the convention act of 1868, so far as the same had come into force, with the exception of certain specified sections and articles, especially those relating to the numbering and lettering of fishing boats.

Since 1883 the provisions of the North Sea convention of 1882<sup>a</sup> have within the limits of the North Sea superseded the regulations of 1843; while outside the North Sea and the British exclusive limits, most of the regulations of 1843 are regarded as obsolete and are rarely enforced, and they have little effect on the fisheries at the present time. It was thought that the success of the North Sea convention of 1882 would speedily result in the application of its provisions to the Channel fisheries also, but nothing has yet been done in this direction.

The British "Manual for the Guidance of Officers Connected with the Sea Fisheries" states that while articles 24-26, 29, 33, 52, and 57-59 of the regulations of 1843 now apply to French boats outside the exclusive fishery limits in the seas between Great Britain and France, "it must be distinctly understood that none of the regulations of 1843 which relate to the size of the mesh of nets, the close time for fish other than oysters, or to matters which are repugnant to the spirit of the North Sea Fisheries Convention, are to be enforced."<sup>b</sup>

#### THE NORTH SEA CONVENTION OF 1882.

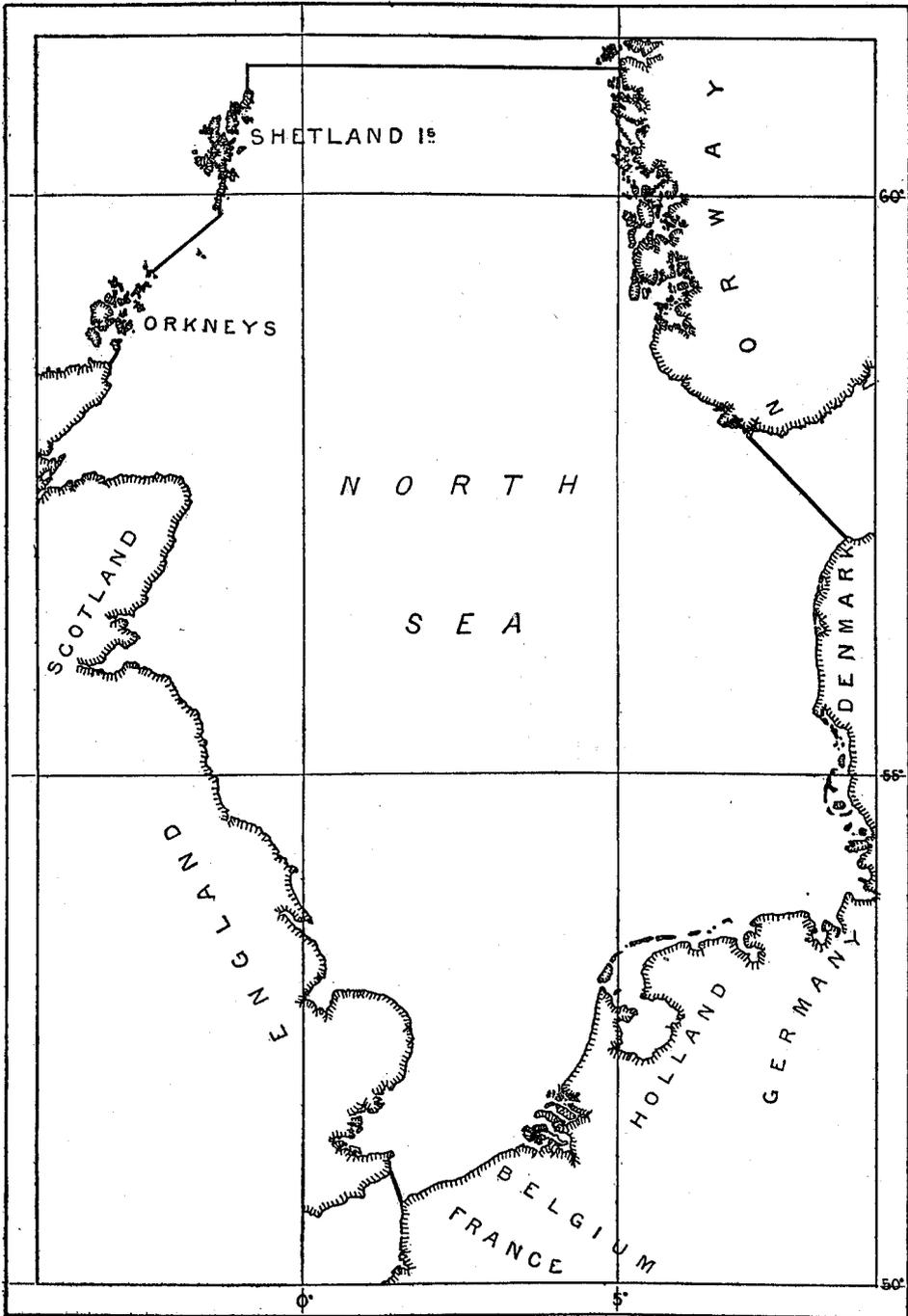
The most important fishery region of the world is the North Sea, situated east of England and Scotland, north of Belgium, the Netherlands and Germany, and west of Denmark and Norway. Within its waters, covering about 150,000 square miles and averaging less than 50 fathoms in depth, about 1,500,000,000 pounds of fish are taken annually, which is far more than the total weight of all the food fish taken on all the coasts and lakes and rivers of the United States. Upon these waters are employed thousands of fishermen from the adjoining countries.

During the latter half of the nineteenth century extremely unsatisfactory police conditions developed in the fisheries of the North Sea. With thousands of vessels fishing in relatively limited areas, much confusion arose, fishing gear was carelessly fouled, and in many instances nets were wantonly destroyed as the easiest method of freeing them, a special implement being provided for this purpose.<sup>c</sup> There was no uniformity in the display of lights and in marking

<sup>a</sup> See p. 116-121 of this paper.

<sup>b</sup> Edition of 1903, p. 9, sec. 23.

<sup>c</sup> An implement known as a "devil" had been employed for several years, especially, it is said, by the Belgian fishermen. Its manufacture, sale and use were interdicted by a municipal law of Belgium dated March 27, 1882.



Map showing area delimited by the North Sea Convention of 1882.

vessels for identification. And there was an absence of regulations for preventing collisions between vessels working in close proximity to each other.

For the purpose of remedying these unsatisfactory conditions and for policing the fisheries outside territorial waters, there was a conference of the interested Governments at The Hague in 1881 and again in 1882, to discuss provisions for joint regulations. This resulted in a convention signed on May 6, 1882, by delegates from Belgium, Denmark, France, Germany, Great Britain, and the Netherlands, power being reserved for adherence by Norway and Sweden. This is doubtless the most important document ever drawn up in connection with international police of the fisheries.

The principal stipulations of this convention are as follows:<sup>a</sup> Article 1 restricts the provisions of the convention to subjects of the contracting parties. Articles 2 to 4 define the limits of territorial jurisdiction and the limits of the North Sea for the purposes of the convention. Articles 5 to 13 provide rules for registering, numbering, and lettering vessels for identification, and the marking of small boats, nets, etc. All the fishing vessels must be registered and the registers are exchanged between the powers; every vessel bears in white oil color on black ground its name, number, and the initial of its harbor, and likewise carries an official voucher of its nationality. Articles 14 to 24 provide minute restrictions on fishermen in the conduct of their various operations so as to avoid collisions and to prevent injury to the nets and other apparatus. Article 25 refers to the salvage of fishing vessels, boats, nets, lines, etc. Articles 26 to 37 relate to the supervision of the fisheries by cruisers of the different nations and to the prosecution of offenses against the convention. The executing of regulations respecting documents, marking boats and equipment, and the use of interdicted implements was placed under the exclusive superintendence of the cruisers of the nation of each fishing boat; but cruisers of any one of the several nations were made competent to authenticate all infractions of the regulations other than these. For this purpose they have the right to visit, search, and arrest; but a seized vessel must be conveyed to a harbor of her flag state and turned over to the authorities there. All violations are to be tried by the courts of the state to which the contravening vessels belong; but cases of minor damage may be arbitrated at sea by the commanders of the cruisers should the parties concerned agree to it. This superintendence by cruisers is authorized only in respect to boats belonging to nations which are parties to the convention, and only when such boats are within the North Sea as defined by the convention. Articles 38 to 39 provide that the convention shall be ratified, and shall continue in operation until one of the powers gives notice of intention to terminate it; and in that event the convention shall be maintained among the other powers unless they give a similar notice.

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<sup>a</sup> The articles are given in full in Appendix C (page 163 of this paper). The matter is treated in great detail by Hacke, *Einige Opmerkingen over het Politietoezicht op Zee, in verband met de Zeevischerij-Convention van 6 Mei 1882*, Amsterdam, 1885; and by Rykere, *Le régime légal de la pêche maritime dans la Mer de Nord*, Paris, 1901.

Each of the interested Governments enacted legislation for enforcing the provisions of this convention, the laws being promulgated by the respective states on the following dates: In Great Britain, August 2, 1883; in the Netherlands, December 7, 1883; in Belgium, January 6 and 8, 1884; in France, January 15 and April 5, 1884; in Denmark, March 29, 1884, and in Germany, April 30, 1884. The regulations of the convention came into force on May 15, 1884.

Although an additional article made provision for adherence to the convention by Norway and Sweden, either jointly or separately, neither of these nations has assented, and they are not bound thereby. Nor has any one of the signatory powers withdrawn; so that the regulations of the convention are yet operative among them.

In 1891 the Governments of Great Britain and Belgium united in a declaration for the purpose of simplifying the procedure for the settlement of differences between British and Belgian fishermen in the North Sea outside territorial waters, and of reducing as much as possible the injuries they may sustain from the fouling of fishing gear. This declaration is given at length in Appendix D (page 167 of this paper). It was confirmed in Great Britain on July 21, 1891 (54 and 55 Vict., ch. 37), and in Belgium on August 19, 1891.

Difficulties among the fishermen in the North Sea decreased as a result of the convention of 1882, especially with the better understanding of that convention and of the laws founded upon it, although cases still occur in which avoidable injury is occasioned to the gear. The following summary shows for a series of years the number of complaints made against foreigners by British fishermen, with the amount of damages claimed and the amount of damages collected, and similar data relative to foreign complaints made against British fishermen. This probably represents fully three-fourths of the total number of complaints made during the years herein reported.

SUMMARY SHOWING FOR A SERIES OF YEARS THE NUMBER OF COMPLAINTS, AMOUNT OF DAMAGES CLAIMED AND THE AMOUNT OF DAMAGES COLLECTED, BY AND AGAINST BRITISH FISHERMEN UNDER THE NORTH SEA CONVENTION OF 1882.

Year.	Complaints against foreigners by British fishermen.			Complaints against British by foreign fishermen.		
	Num-ber.	Damages claimed.	Damages collected.	Num-ber.	Damages claimed.	Damages collected.
1891	12	£ 318	£ 13	11	£ 2,212	£ 57
1892	9	280	143	16	310	53
1893	10	229	65	20	513	74
1894	12	115	102	24	330	40
1895	4	208	98	14	416	33
1896	4	41	6	9	162	-----
1897	5	212	95	12	159	54
1898	18	696	158	13	106	-----
1899	9	372	-----	8	273	169
1900	14	943	701	8	253	18
1901	10	304	93	10	727	5
1902	5	484	442	9	275	65

The greater size of steam trawlers, the improvements in the apparatus of capture, and the increased use of ice in preserving the catch, have resulted in extending trawling operations not only to all the available waters in western Europe, but to those of Iceland, northern Europe, and even to the coast of Africa. The increased receipts have been especially noticeable from Iceland, Faroe, and the Bay of Biscay. Throughout the whole of this region the area within a depth of 100 fathoms is now exploited, and the fishermen of several nationalities meet there on a common footing; but the regulations of the convention of 1882 apply to no other region than the North Sea.

Not a regulation of the fisheries themselves, but having an important bearing thereon, is the abolition of the liquor traffic among the fishing vessels in the North Sea. Trading boats from England, Germany, and the Netherlands were especially fitted out two or three decades ago for traffic among the fishing fleet, supplying the cheapest of liquors, tobacco, and obscene cards and literature. Dreadful evils resulted from this "bumboat" trade. The question of its regulation or abolishment was discussed at The Hague conference in 1881 which resulted in the North Sea convention of 1882, but without effect. After numerous unsuccessful attempts at regulation, an international convention was entered into on November 16, 1887, by representatives of the signatory powers of the 1882 convention, binding them to effect such legislation as would entirely prohibit the sale, exchange, or barter of spirituous liquors—that is, liquids "obtained by distillation and containing more than 5 per centum of alcohol"—and would establish a system of licensing bumboats for traffic with persons on board or belonging to fishing vessels of those nationalities in the North Sea outside territorial waters.

Failure on the part of France to ratify the convention nullified its conclusions.<sup>a</sup> However, on February 14, 1893, the other signatory powers, viz, Belgium, Denmark, Germany, Great Britain, and the Netherlands, entered into a protocol by which they agreed to bring the convention into force so far as their own boats and subjects were concerned, when such boats or subjects are outside territorial waters and within the limits of the North Sea, as defined by article 4 of the 1882 convention. Each licensed boat is required to exhibit, from the head of the principal mast, a white flag 2 meters square, bearing in the center the letter "S" in black, 1 meter high and 2 decimeters wide. Acts of legislature passed by each of these powers came into force on May 23, 1894. Since that date traffic in liquor by their subjects in the North Sea has been illegal, and in the same waters provisions and other articles for use by fishermen

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<sup>a</sup>It is but just to add that this nonaction on the part of France was not due to sympathy with the traffic, for it has not been represented that boats of that nation have ever engaged therein. It was because of the opinion that the regulations were contrary to the fundamental principles of the freedom of commerce and the view that the municipal laws of the offending nations would suffice to end the traffic.

may be sold only by persons licensed by the respective Governments.<sup>a</sup> The enforcement of these regulations is referred to the same officials who are charged with the police of the fisheries in the North Sea, with the proviso that the regulations do not in any way affect French fishermen or concern French cruisers.

#### ANGLO-DENMARK CONVENTION OF 1901.

The success of the North Sea convention of 1882 resulted in similar action by Great Britain and Denmark for regulating the police of the fisheries prosecuted by their subjects outside territorial waters about Iceland and the Faroe Islands. A convention between these two powers was signed at London on June 24, 1901, and ratifications were exchanged on May 28 in the year following. This convention and the regulations established thereunder applied to about 230,000 square miles (geographical) of water area outside the territorial jurisdiction of Denmark about Iceland and the Faroe Islands, constituting the largest definite area in which an attempt has been made to police the fisheries by international convention.<sup>b</sup>

In detail the provisions of this convention were almost literally the same as those of the North Sea convention concluded at The Hague in 1882. Each article followed the older convention almost word for word, except in article 4, defining the geographical limits to which they applied, and in article 8, which contained the additional provision that steam fishing vessels should be appropriately marked on the funnel. Since the convention of 1882 there had been a very large increase in the number of steamers employed in the trawl fisheries, and most of the English vessels fishing about Iceland were of this type, hence the importance of this item. As in all other international fishery conventions, the courts of the flag state of the infringing vessel were made exclusively competent to deal with infractions of the regulations, but cruisers of either of the signatory powers were authorized to search and arrest. An additional article stipulated that any other Government, whose subjects fish in the seas surrounding Iceland and the Faroe Islands, may adhere to this convention; but no nation has yet availed itself of this privilege.<sup>c</sup>

The geographical limits for the application of this convention were fixed as follows: "On the south by a line commencing from where the meridian of North Unst light-house (Shetland Islands) meets the parallel of sixty-first degree of north latitude to a point where the ninth meridian of west longitude meets the parallel of 60° north latitude, and from thence westward

<sup>a</sup> For a more extended discussion of these regulations, see Guillaume in *Revue de Droit International et de Législation Comparée*, t. xxvi (1894), p. 488.

<sup>b</sup> The dominion of the North Sea convention of 1882 approximated 150,000 square miles. The concurrent municipal laws of 1875-1877 regulating the Jan Mayen seal fishery (see p. 135) applied to about 285,000 square miles.

<sup>c</sup> The articles of this convention are given in full in Appendix F (page 169 of this paper).

along that parallel to the meridian of  $27^{\circ}$  west longitude. On the west by the meridian of  $27^{\circ}$  west longitude. On the north by the parallel of  $67^{\circ} 30'$  of north latitude. On the east by the meridian of the North Unst light-house." (Article iv.)

#### SUBMARINE CABLE CONVENTION OF 1884.

Another restriction of the fisheries on the high seas is a result of the convention for protecting submarine telegraph cables.

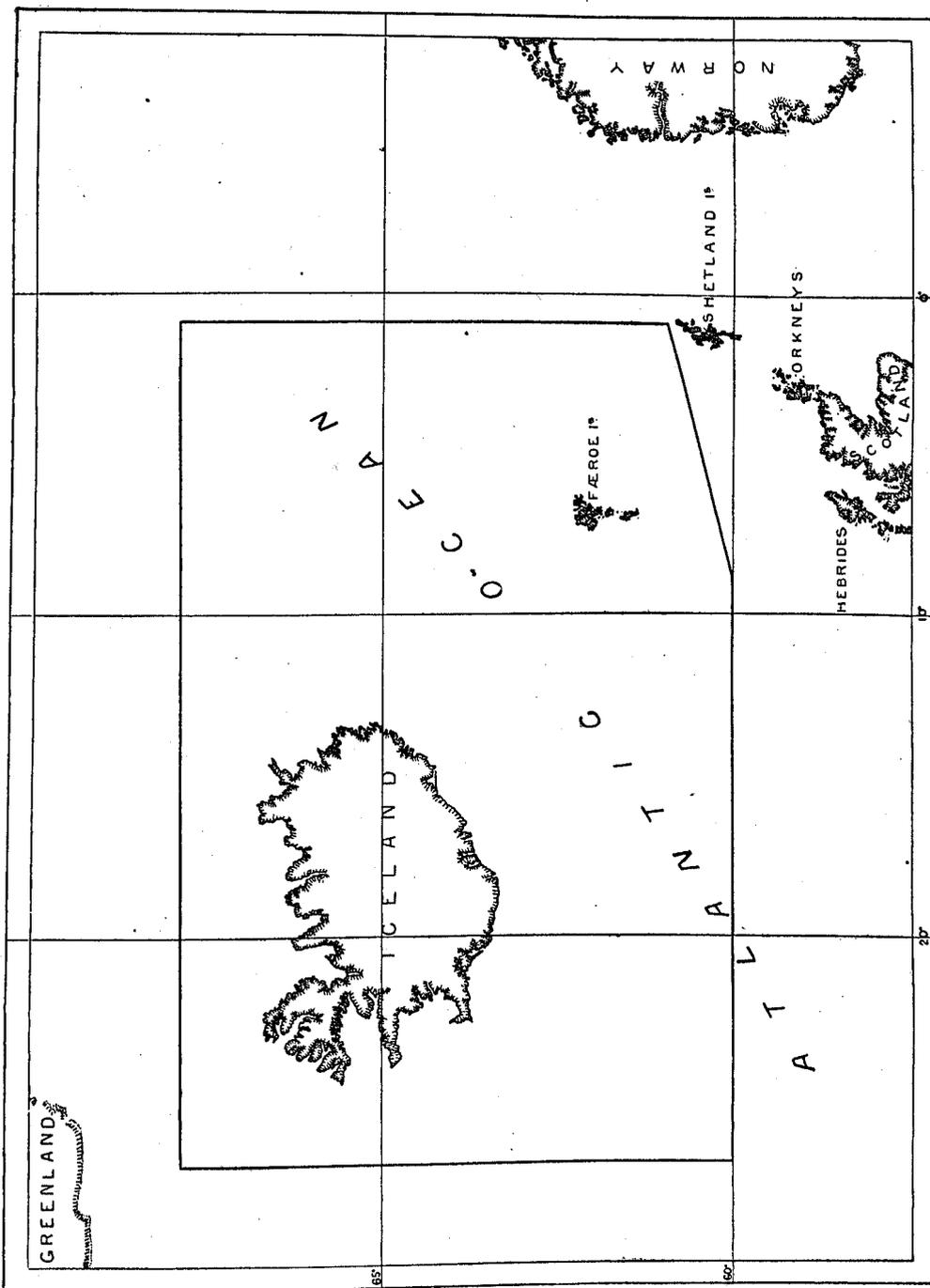
As early as 1869 the United States Government suggested a conference at Washington for consideration of this subject, but the Franco-Prussian war prevented the proposed convention. Various meetings were subsequently held at Rome, Brussels, and Paris, and an "International Convention for the Protection of Submarine Cables" was finally concluded and signed by the representatives of 25 sovereign powers at Paris, on March 14, 1884. The ratifications of 17 of these states were exchanged at Paris on April 16, 1885, and the convention was proclaimed on May 22 of the same year.

While the submarine cable regulations have not seriously interfered with fishing operations in any single region, the convention is noteworthy in this connection because of the very large number of sovereign states which adhered to it, including nearly every important nation in the world outside Asia, and even that continent was represented by Turkey, and Japan acceded to it some years later, so that the dominion of this convention now extends almost as far as civilization. Indeed, since those powers which have not signed the convention have not acted in opposition to it, one might safely maintain that these regulations have almost become universal international law through custom.

The terms of this convention are applicable outside the territorial waters, and they provide among other things that willful and unnecessary injury to a submarine cable shall be a punishable offense. Vessels, fishing gear, and nets shall be kept at the distance of at least 1 nautical mile from a vessel flying signals that she is engaged in laying or repairing a cable; "nevertheless, a period of twenty-four hours at most shall be allowed to fishing vessels that perceive or are able to perceive a telegraph ship carrying the said signals, in order that they may be enabled to obey the notice thus given, and no obstacle shall be placed in the way of their operations during such period." Vessels, nets, and gear must be kept at the distance of at least one-quarter of a nautical mile from buoys designed to show the position of cables when the latter are being laid, are out of order, or are broken. And owners of vessels who can prove the sacrifice of an anchor, a net, or any other implement used in fishing, in order to avoid injuring a cable, shall be indemnified by the owner of the cable, upon sufficient proof made promptly to the competent authorities.<sup>a</sup>

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<sup>a</sup> The articles of this convention which relate to the fisheries are given in full in Appendix E (page 168 of this paper).



Map showing territory covered by the Anglo-Denmark Convention of 1901.

A final protocol, signed at Paris, July 7, 1887, fixed upon May 1, 1888, as the date upon which the instrument was to become finally operative. This was ratified by the United States on May 1, 1888, suitable provision for its enforcement having been already made by act of February 29, 1888 (25 Stat. L., p. 41). Practically all the other parties to the convention have enacted appropriate legislation for enforcing the regulations. And while these have safeguarded the property of the cable companies and the freedom of telegraphic communication, they have not imposed special hardship upon the fishermen or restricted their operations in any noteworthy degree.

#### REGULATIONS OF THE FUR-SEAL FISHERIES.

No attempt at regulating or restricting any branch of the fisheries on the high seas has caused more extended discussion or is more interesting from the point of view of this paper than the protection which the American and the Russian Governments have endeavored to give to the fur seals outside territorial jurisdiction in the North Pacific Ocean and tributary waters.

The well-known breeding habits of this animal, and its resort to the same shores year after year, render its capture on the rookeries an easy matter. This resulted in the slaughter of millions of them a century ago and nearly exterminated the species in the southern seas. But on the Pribilof Islands, the great breeding grounds of the northern fur-seal herd, the Russian Government about 1840 developed a system of management which tended to the greatest utilization with the least injury to the perpetuation of the resource. The keynote of this system was the absolute protection of the females, none whatever being intentionally slaughtered, and the killing was confined to the young males 2 or 3 years old, 95 per cent of which are superfluous for breeding purposes, owing to the polygamous habits of the animal. Grouped by themselves on the rookeries, the young males are surrounded, and those selected for slaughter are slowly driven off, precisely as one would drive a flock of sheep.

Under this wise system of management the herd prospered, and contained probably 3,000,000 or 4,000,000 animals when the Pribilof Islands came into the possession of the United States with the transfer of Alaska under the convention of March 30, 1867.

The act of July 27, 1868, by which the territory was erected into a customs district, made it the duty of the Secretary of the Treasury "to prevent the killing of any fur seal," except as it should be otherwise provided by law. By act of July 1, 1870, it was made "unlawful to kill any fur seal upon the islands of St. Paul and St. George, and in the waters adjacent thereto, except during the months of June, July, September, and October," or "to kill such seals at any time by the use of firearms, or use other means tending to drive the seals away from the said islands." And in August of the same year the Government leased the privilege of taking fur seals on the Pribilof Islands to a corporation

organized under the laws of California, the take being fixed at 100,000 young males annually, under the system of management developed by the Russian Government.

From time immemorial the Indians of the northwest coast had been accustomed to capture the fur seals in the open sea, as these animals passed along the coast en route to and from the breeding grounds, spearing males and females indiscriminately as they were found sleeping at the surface of the water. The extent of this slaughter was small, probably never exceeding 6,000 or 7,000 in any one year previous to 1879, and it is generally agreed that it had no serious effect in diminishing the herd.

But the high value of fur-seal pelts about thirty years ago induced persons to fit out vessels for conveying a number of Indians and their canoes to the main path of the migrating animals and there follow them day after day, so as to prosecute their capture with greater effect. About 1881 this pelagic fleet extended its operations to Bering Sea, where it met with so much success that the number of vessels quickly increased to 34 in 1886, to 68 in 1889, and to 115 in 1891, each with from 5 to 20 canoes. The number of fur seals taken by these vessels reached the total of 59,568 in 1891, valued at about \$938,196, all of which were taken by Canadian fishermen, as the law of 1868 was enforced against American subjects. In the meantime the American lessees on the Pribilof Islands were obliged by reason of the decreased size of the herd to reduce their take from an annual average of 100,000 pelts previous to 1886 to 12,040 in 1891, valued at about \$360,000. There was a large preponderance of females among the animals taken in the pelagic fishery, owing to the slaughter of surplus males on land, the proportion being about 4 females to 1 male. The capture of a female in the spring migration to the rookeries involved the death of her unborn offspring, and the killing of the mother in August or September resulted in the death of her dependent young on the islands.

Rather than witness the destruction of this valuable resource, the American authorities in 1886 construed the aforementioned acts of 1868 and 1870 as applicable to the entire water area within the limits of territory ceded by Russia in 1867—in other words that Bering Sea was *mare clausum*; and notice was given of this construction, with a view to preventing the pelagic fishery in those waters.

In August, 1886, an American revenue cutter seized 3 Canadian sealing vessels in Bering Sea about 60 miles from the nearest land. On October 4, these vessels were condemned for having been “found engaged in killing fur seal within the limits of Alaska Territory and in the waters thereof in violation of section 1956 of the Revised Statutes of the United States.” After repeated protests on the part of the British Government, the President on January 26, 1887, without conclusion of any questions which might be found to be involved, directed “the discontinuance of all pending proceedings, the discharge of the

vessels referred to, and the release of all persons under arrest in connection therewith." Later in this same year other Canadian vessels were seized and occasioned a renewal of diplomatic controversy.

In a circular letter dated August 19, 1887, Mr. Bayard, the American Secretary of State, proposed international cooperation "for the better protection of the fur-seal fisheries in Bering Sea," sending the communication to the American ministers in France, Germany, Great Britain, Japan, Russia, and Norway and Sweden, for presentation to those respective Governments.<sup>a</sup> The preliminary steps seemed to be viewed favorably by the Governments of France, Great Britain, Japan, and Russia, and "the convention had been virtually agreed on verbally, except in its details;"<sup>b</sup> but in May, 1888, these were suspended by reason of opposition made by the government of Canada, without whose assent Great Britain would not act.

In 1888 no seizures were made of foreign vessels in Bering Sea. But in 1889 the American Government renewed its activity against the pelagic fishery and arrested a number of British Columbian vessels outside the 3-mile limit, claiming that "the Canadian vessels arrested and detained in the Bering Sea were engaged in a pursuit that was in itself contra bonos mores, a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States,"<sup>c</sup> the ownership of the fur seals resulting from ownership of the islands on which they breed and of the coast on which they live. Unfortunately, however, there was no exact precedent in international law for treating the fur seals as the subject of property on the high seas, and indeed no municipal law of the United States had ever so considered them.

Diplomatic correspondence continued between the two Governments, and pending negotiations for the reference of the controversy to a tribunal of arbitration, a modus vivendi was agreed to on June 15, 1891. By this agreement Great Britain undertook to prohibit, until the following May, the killing of fur seals by British subjects in that part of Bering Sea lying eastward of the line of demarcation described in the treaty of 1867 between the United States and Russia, and the United States to prohibit the like killing of seals by citizens of the United States in the same part of Bering Sea and on the islands thereof, in excess of 7,500 to be taken on the islands for the subsistence and care of the natives.

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<sup>a</sup> "Without raising any question," said Mr. Bayard, "as to the exceptional measures which the peculiar character of the property in question might justify this Government in taking, and without reference to any exceptional marine jurisdiction that might properly be claimed for that end, it is deemed advisable to attain the desired ends by international cooperation." (S. Ex. Doc. 106, 50th Cong., 2d sess., 84.)

<sup>b</sup> Letter from Mr. Phelps, American minister at London, dated September 12, 1888.

<sup>c</sup> Letter from Mr. Blaine, Secretary of State, to Lord Salisbury, January 22, 1890.

On April 18, 1892, a second *modus vivendi* was concluded embodying the provisions of the *modus vivendi* of 1891, with the added subject of compensation for damages to be paid "by the United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the arbitration upon the bases of such a regulated and limited catch or catches as in the opinion of the arbitrators might have been taken without an undue diminution of the seal herds; and, on the other hand, if the result of the arbitration shall be to deny the right of British sealers to take the seals within said waters, then compensation shall be made by Great Britain to the United States (for itself, its citizens, and lessees) for this agreement to limit the island catch to seven thousand five hundred a season, upon the basis of the difference between this number and such larger catch as in the opinion of the arbitrators might have been taken without an undue diminution of the seal herds."

On February 29, 1892, the two Governments agreed to refer to a tribunal of seven jurists the question of jurisdiction over the fur seals in Bering Sea, and what concurrent regulations were desirable for their protection outside the jurisdictional limits of the respective Governments. The tribunal of arbitration met in Paris in 1893. The American claim of exclusive jurisdiction was not strongly pressed, and the principal issue was: "Has the United States any right, and if so, what right, of protection or property in the fur seals frequenting the islands of the United States in Bering Sea when such seals are found outside the ordinary three-mile limit."

On the question of property in the fur seals, the United States claimed that these are not entirely *feræ naturæ*, but are in part domesticated, as is the honey bee; that ownership in the islands upon which fur seals breed, that their habit in regularly resorting thereto and rearing their young thereon, that their going out in search of food and regularly returning thereto, and all the facts and incidents of their relation to the islands gave to the United States a property interest therein; and that this was such a property interest as entitled the Government to preserve the herd from destruction by employment of such reasonable force as may be necessary, even at considerable distance from the islands.

Irrespective of this distinctive right of property in the fur seals, the American Government claimed for itself and its people an interest and an industry in the proper use of the fur-seal herd on its territory, which it was entitled to protect against wanton destruction by individuals for the sake of the small and casual profits in that way to be gained; and that no part of the high seas is or ought to be used by individuals for the purpose of accomplishing the destruction of national interests of such a character and importance. Furthermore, the United States, alone possessing the power of preserving this valuable interest, was in a most just sense the trustee thereof for the benefit of mankind and should be permitted to discharge that trust without hindrance.

On the question of ownership in the migrating seals, the decision of the arbitrators in the tribunal, by a majority of five against two, was that "the United States has not any right of protection or property in the fur seals frequenting the islands of the United States in Bering Sea, when such seals are found outside the ordinary 3-mile limit." As provided for in this event, a system of regulations was formulated for the protection of the herd outside the jurisdictional limits, to be enforced jointly by the two nations, the cruisers of each of the two powers being authorized to visit, search, and arrest all violators,<sup>a</sup> but a seized vessel must be conveyed to a harbor of her home state and turned over to the authorities there for trial.

These regulations provided for a suspension of all pelagic sealing in Bering Sea in May, June, and July, which covers the breeding season; and they interdicted sealing at any time within a zone of 60 geographical miles around the Pribilof Islands, which was supposed to cover practically the feeding ground of the mother while her young is dependent on her for nourishment. Licensed sailing vessels only were permitted to engage in the fishery, and the use of nets, firearms, and explosives was interdicted. These regulations were to remain in force until abolished by mutual agreement, but were to be examined every five years with a view to modification.<sup>b</sup>

For executing these regulations, an act was approved in the United States on April 6, 1894,<sup>c</sup> and a similar act was passed by Parliament<sup>d</sup> on the 23d day of the same month. Other maritime powers were asked by the United States to submit voluntarily to the regulations made by the arbitrators, but only Italy has agreed to this<sup>e</sup> and all other nations remain free to engage in pelagic sealing at any time without regard to the closed season mentioned in the award.<sup>f</sup> But as the fishery was then practiced almost wholly by vessels flying either the Canadian or the American flag, it was virtually subject to the regulations of the Paris tribunal.

In 1894 these regulations were enforced by the two interested Governments among their respective subjects, the United States spending over \$500,000 in maintaining its patrol. But notwithstanding this protection, the pelagic catch of fur seals exceeded that of any preceding year, amounting to 61,838, as com-

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<sup>a</sup> This is one of the three instances in which the United States has consented to a departure from its stoutly maintained policy of freedom of its merchantmen from search by foreign cruisers in time of peace, the successful advocacy of which forms one of the most glorious records in American history.

<sup>b</sup> These regulations are given in detail in Appendix G (page 173 of this paper).

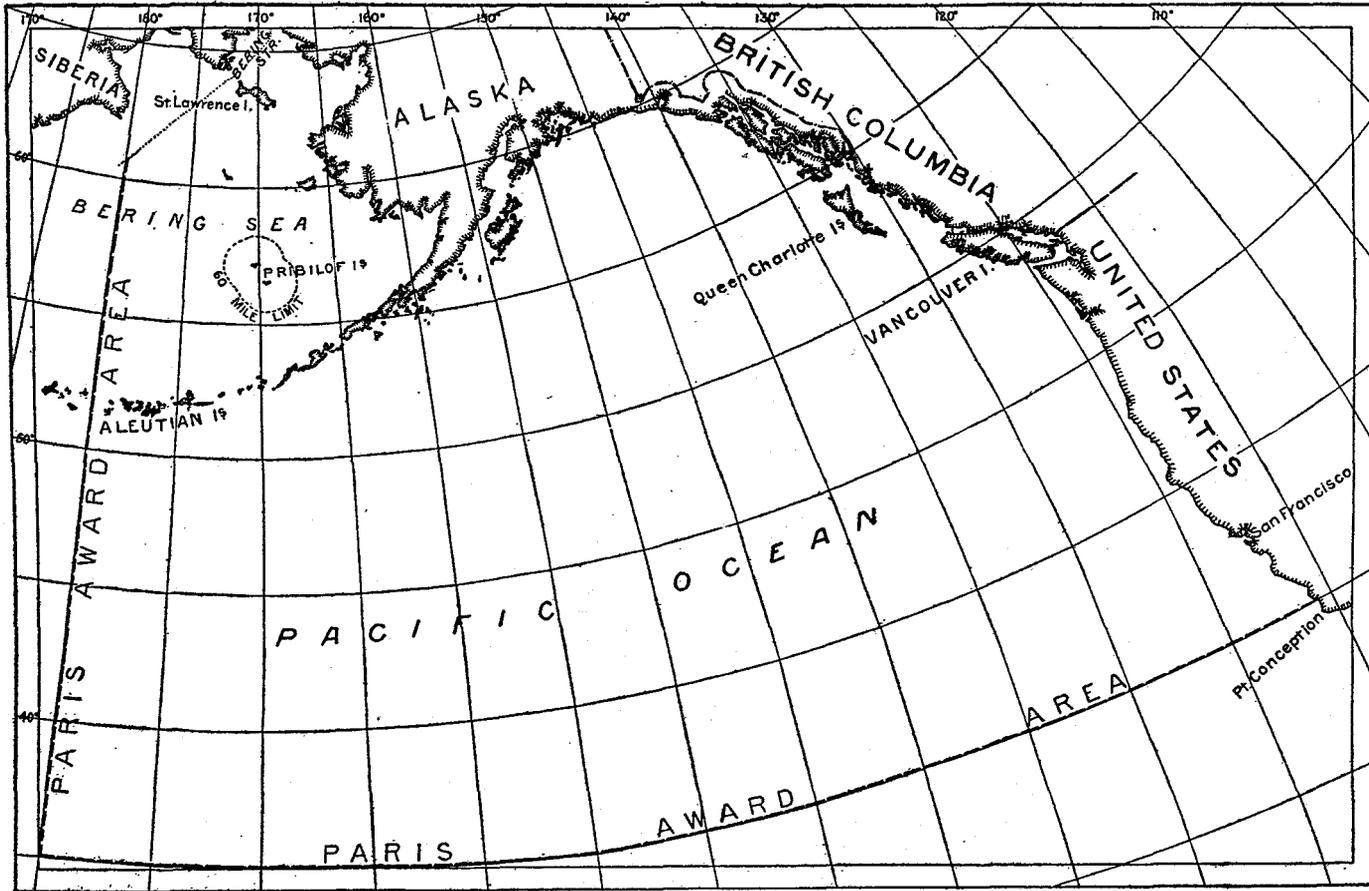
<sup>c</sup> 28 Stat. L., 52.

<sup>d</sup> Foreign Relations, 1894, App. 1, p. 107-233.

<sup>e</sup> Martens, *Nouveau Recueil General de Traites*, 2d series, xxii, p. 565.

<sup>f</sup> France and Portugal signified their willingness but do not appear to have executed the regulations. The Government of Denmark declined to adopt them on the ground that no vessels of that nation were engaged in sealing in those waters. Japan declined to enforce them among its vessels unless similar protection should be given to the Japanese fur-seal fisheries. And Russia consented to adhere to the regulations only on condition that they be extended to the whole of the Pacific Ocean north of the thirty-fifth degree of latitude. (Moore, *Digest of International Law*, p. 922-923.)

B. B. F. 1908—9



Map showing area designated in the award of the Fur-seal Arbitration Tribunal.

pared with 30,812 in 1893, owing principally to the fact that the mother fur seals feed far outside of the protected zone. The vessels followed the herd as it moved along the coast in the spring and entered Bering Sea at the end of the close season in August, when under the ineffectual regulations they were free to use the spear outside the 60-mile zone. The pelagic catch in Bering Sea during 1894 numbered 31,585, of which over 80 per cent were taken by Canadian vessels.

The higher value and the greater abundance of fur seals in the Pribilof herd had resulted in attracting to it the attention of the pelagic sealers, so that previous to 1891 the herd resorting to the Russian islands was relatively free from their attention. But the prohibition of fur sealing within the limits agreed upon in the *modus vivendi* of 1891 and in that of 1892 resulted in diverting the fleet to the Russian coast, and caused such a destruction in that herd that measures of protection were imperative. In 1892 the Russian authorities arrested 6 vessels charged with fur sealing within the marine league about Copper Island.

On February 12 (24), 1893, in response to an inquiry from the British ambassador, made in behalf of Canadian sealers, as to the limits within which they would be permitted to take seals, the Russian minister of foreign affairs wrote that the insufficiency of the strict application of general rules of international law to this matter was conceded in the negotiations between Great Britain, the United States, and Russia in 1888, and that the necessity for exceptional measures had been confirmed by the Anglo-American *modus vivendi* of 1891, which had placed Russian interests in an abnormal and exceptional position. As a matter of self-defense, for the ensuing season and pending the adoption of international regulations, Russia would prohibit sealing within a zone of 10 miles on all her Pacific coasts, and within a zone of 30 miles around the Commander Islands and Robben Island. Although denying that Russia had a right to extend her jurisdiction beyond the usual territorial limits, in view of the existing conditions the British Government expressed willingness to enter into an agreement with Russia for the enforcement of these protective zones. Such an agreement was concluded in May, 1893,<sup>a</sup> and an order in council was issued on November 21, 1895, to give effect to this arrangement.

On May 4, 1894, a somewhat similar *modus vivendi* was concluded between the Governments of Russia and the United States. This provided, on the one hand, that the United States would prohibit its citizens from taking fur seals within a zone of 10 nautical miles along the Russian coasts of Bering Sea and of the North Pacific Ocean, as well as within a zone of 30 nautical miles around the Commander Islands and Robben Island; and, on the other hand, that the Russian Government would limit to 30,000 the number of fur seals to be taken during the year 1894 on the same islands. It was agreed that this provisional

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<sup>a</sup> See Blue Book, "Russia, No. 1, 1893."

expedient might be terminated at will by either party upon giving notice to the other.

The fur seals in the Pacific continued to decline so rapidly in numbers that in 1896 Great Britain and the United States agreed to the appointment of a joint scientific commission to study the fur-seal life in Bering Sea with a view to greater protection. The investigations of this—the Jordan-Thompson—commission covered the seasons 1896 and 1897, and led to the conclusion that the cause of the decline was the killing of females at sea, and that the abolition of pelagic sealing was essential to the preservation of the herd. It was expected that the joint high commission called at Quebec in 1898 would act upon this finding, but unable to reach an agreement on the boundary dispute between Canada and the United States, that commission suspended without taking action, and the fishery has continued up to the present date under the very ineffective arbitration regulations of 1893.

So far as concerns the actual preservation of the fur seals from commercial ruin and extermination, it probably is not too much to say that virtually nothing has been accomplished by all the negotiations and arbitrations during the last thirty years. And while restriction of the pelagic fishery may have served to retard somewhat the exhaustion of this resource, it has been entirely out of proportion to the expense involved.

The official returns show that from 1890 to 1901 the American Government expended \$3,357,097 for this purpose, as follows:

United States navy patrol.....	\$1,003,048
Revenue-cutter patrol.....	1,299,735
Expenses of Paris tribunal.....	234,000
Award of damages, pelagic sealers' arrest.....	473,151
Cost of Jordan-Thompson Commission.....	30,000
Cost of treasury agents.....	317,163
Total.....	3,357,097

In view of the inefficiency of the regulations established by the Paris tribunal of 1893 and the great destruction of the herd, the American Government has made additional efforts to put a stop to the pelagic fishery. It has prohibited the fishery to its citizens; and, after ineffectual efforts to induce other governments to do likewise, has attempted to reduce the value of the pelts to the point where subjects of other governments would find no profit therein, employing such measures as branding all female seals on the islands, and interdicting the importation into this country of any fur-seal skins taken in the pelagic fishery. Probably the most extreme measure was introduced in the Fifty-fourth Congress. This bill, which passed the House unanimously, but failed in the Senate, required that in the event that the President failed to negotiate a satisfactory agreement with the Government of Great Britain for the preservation of the herd, the Secretary of the Treasury should cause to be

slaughtered every fur seal on the Pribilof Islands, without provision for the preservation of the species.

It is generally agreed that the preservation of the fur seals involves the complete elimination of the pelagic fishery. At present this is prosecuted only by vessels from Canada and Japan, the fleet of the latter having increased rapidly since 1893. The 15 vessels composing the Canadian fleet in 1907 secured 2,858 skins from Bering Sea, 448 from the vicinity of Copper Islands, and 1,934 from the British Columbia-Alaska coast, a total of 5,240 skins. In accordance with the provisions of the Paris award, these vessels are prohibited from killing seals in Bering Sea at any time with firearms or in any manner within a distance of 60 miles about the Pribilof Islands, and must observe a closed season between May 1 and July 31 of each year. The 36 vessels in the Japanese pelagic sealing fleet in 1907 secured about 9,000 skins in Bering Sea and the North Pacific Ocean, hunting in any manner and anywhere outside the marine league, as these vessels are not bound by the regulations of the Paris tribunal. During the greater part of the summer the Japanese vessels hovered about the Pribilof Islands, killing seals just outside the 3-mile territorial limit.

For years an effort has been made to induce the Canadian government to prohibit her fishermen from engaging in the pelagic fishery. But since this is a vested interest in which the right of her citizens was established by the decision of the Paris tribunal, and since such an interdiction would be almost exclusively for the financial advantage of America and Russia, the Canadian government has not seen fit to follow such a course. It has been suggested that for a definite sum of money the right of the Canadians to take seals on the high seas be sold to the American Government; but many practical and legal difficulties attach to this course, aside from any question as to whether it would meet with the approval of the nations interested. Since a termination of the pelagic fishery would promote the prosperity of the sealing on the rookeries, a more equitable plan would seem to be an exchange with the Canadian government of a share in the revenue from the rookeries for a prohibition of the pelagic fishery.

Some years ago the Japanese Government professed a willingness to concur in any agreement made between Great Britain and the United States for preserving the fur seals. However, that was before so many Japanese vessels were employed in the pelagic fishery, and possibly that Government might not now be so willing to abandon this vested interest without some equivalent. Any arrangement made with the Canadian government which is not concurred in by the Japanese Government would be wholly valueless, for experience of the last few years has shown how easy it is for a Canadian sealer to place his boats under the Japanese flag. Indeed, even should arrangements be made with both Canada and Japan, there would be no assurance that vessels of other nationalities might not engage in the pelagic fishery.

In the narrow waters connecting the Baltic and the North Sea much confusion developed near the close of the last century between the fishermen of Sweden and Denmark, particularly as to the limits of territorial jurisdiction from which they were respectively excluded. This resulted in a convention, signed on July 14, 1899, which set forth the limits of territorial jurisdiction and extended to the subjects of each nation certain privileges within the territorial waters of the other; it also required that boats, fishing gear, etc., should be suitably marked and that avoidable injury thereto should be assessed against the person responsible.

This convention<sup>a</sup> was not so broad in its scope as the North Sea convention of 1882 or the Anglo-Denmark convention of 1901. For its purposes the waters between Sweden and Denmark were defined to be: (1) The Cattegat, limited by a line on the north extending from Skagen to Vinga light-house and thence to Hesingen Island, and on the south by lines extending from Hasenore to Gniben and from Kullen to Gilberghaven; (2) The Sound or Örasund, extending from the Kattegat on the north to a line drawn from Falsterbo to Stevns on the south, and (3) the navigable waters of the Baltic along the coast from Falsterbo to Simbrishamn and also around the Danish islands Bornholm and Kristiansö.

The area reserved to the subjects of each country extends seaward to the distance of 4 geographical miles (one-fifteenth of a degree of latitude) from the coast—that is, the outermost islands and the reefs not constantly covered by water. But in the Cattegat Swedish subjects are authorized to fish within a distance of 3 geographical miles of the shores of the Danish island Anhalt, and Danish subjects are authorized to fish at the same distance outside a straight line drawn from Hallands Wäderö light-house to Tylo light-house on the Swedish coast.

The convention made two other exceptions to the 4-mile rule, viz: (1) In The Sound the subjects of each country are authorized to fish everywhere without discrimination, with this limitation, that along the shores of each side within a depth of 7 meters the subjects of the other country are not permitted to catch any other fish than herring; and (2) in the Baltic along the shores of Bornholm and Kristiansö islands and on the Swedish coast from Falsterbo to Cimbrishamn fishing for herring with nets is permitted to the subjects of each country from May 1 to August 31.

The convention defined the manner in which the vessels and the various forms of fishing gear shall be marked. In accordance with its provisions, whenever a subject of either country occupies a fishing station with his gear duly marked he may not be ousted therefrom. If fishing gear is set or hauled over marked gear, or if a net is so hauled that duly marked gear is needlessly

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<sup>a</sup>The original text and a translation of this convention are given in Appendix H (page 174 of this paper).

damaged, the owner thereof has the right to indemnity from the person causing the damage. This protection applies to salmon gear set around Bornholm and Kristiansö islands only from October 1 to April 1, inclusive.

Offenses against the convention are to be reported and tried in the country to which vessel of the guilty party belongs, and the punishment consists of fines ranging from 10 to 200 crowns.

A protocol to this convention set forth that the respective Governments would take the necessary measures for executing the provisions of the convention and especially those relating to police supervision; and furthermore that differences of opinion regarding the interpretation or application of the convention which could not be adjusted by diplomatic negotiations should be submitted to arbitration. The convention and protocol were ratified at Copenhagen on July 21 and at Marstrand on August 4, 1899, and the ratifications were exchanged at Stockholm on November 10, 1899.

On October 5, 1907, this convention was supplemented by a declaration, taking effect November 1, 1907, which specified that in The Sound fishing shall be permitted to the subjects of each country everywhere without restriction other than that along the shores of each side of the sound within a depth of 7 meters subjects of the other country shall not fish with nets for any other species than herring. And in the Baltic Sea along the coast of Bornholm and Kristiansö islands and on the Swedish coast from Falsterbo to Cimbrishamn the herring fishery with draft nets shall be common to the subjects of each country from May 1 to August 31.

The declaration also added this important provision: Plaice less than 25½ centimeters in length (21 centimeters from the point of the nose to the root of the tail) shall not be permitted on board any fishing vessel in the Cattegat, its bays or inlets, nor shall any such plaice be landed, sold, or shipped from one locality to another on the coasts of the Cattegat, but shall be returned to the water as quickly and as uninjured as possible. The same provisions apply to The Sound, excepting that in certain towns plaice 21 centimeters long (17 centimeters from the point of the nose to the root of the tail) may be used for consumption in the communes lying next to the coast.

#### GREENLAND SEAL FISHERY REGULATIONS OF 1875-1877.

Although they are not strictly international in the sense of binding the interested states in their relations with each other, yet it seems that reference should be made to the concurrent regulations enacted in 1875-1877 by Great Britain, Denmark, the Netherlands, Norway, and Sweden for protecting hair seals in the seas adjacent to the eastern coast of Greenland, and especially about the island of Jan Mayen.

Very rapid is the growth of the young seals born each March on the ice floes drifting down from the polar sea. The skin, with the attached fat, weighs only about 8 pounds at birth; but nourished by their mothers' milk on the icy

cradles the young animals increase rapidly in weight, so that at four weeks the pelt weighs about 40 or 50 pounds and the oil and the skin are in prime condition for commercial use. At this age the young seals are easily captured by vessels which penetrate among the ice floes, carrying men who descend upon the ice and club them to death in large numbers, single vessels sometimes slaughtering several thousand in a day.

There are two principal fisheries for seals in the northern Atlantic, the so-called Newfoundland fishery and the Jan Mayen or Greenland fishery. Although two or three of the vessels are owned in Scotland, the Newfoundland fishery is prosecuted entirely from St. Johns in that colony, so that colonial legislation has been found sufficient for its regulation and protection. The Greenland fishery is carried on between Greenland, Spitzbergen, and the island of Jan Mayen, but mostly within 400 miles of that island; and the vessels engaged therein have sailed from Scotland, Norway, Germany, and to a less extent from Denmark and Sweden.

Forty years ago this fishery was extensive, the annual take of pelts numbering about 200,000. Owing to the small area on which the seals breed and the large number of vessels employed, there was much competition among the fishermen in being the first on the ground, and very many young seals were slaughtered within a few days after birth, when they were wholly defenseless, making no effort to escape from the clubs of the hunters, and almost complete extermination of the herd was relatively easy. Furthermore, the pelts secured were very small, whereas had they been permitted to remain for two weeks longer the average value would have been several times as great.

There has never been an international convention, treaty, or arbitration for protecting these animals, but a close season has been established through analogous municipal enactments by each of the interested nations acting in concert. Norway and Sweden took the initiative in this matter and by informal concert were quickly followed by Great Britain, Denmark, and the Netherlands. Each power legislated independently for itself, and its legislation operated only on its own subjects. These regulations may be repealed, respectively, at the pleasure of the enacting state without notice to the other powers interested. Each nation acts with complete independence in the enforcement of its own regulations, no provision whatever being made for one government to arrest or otherwise interfere with foreign fishermen violating the regulations, which is probably the principal feature of the important conventions previously discussed in this paper.

In Great Britain legislation on this subject began with an act of Parliament passed on June 14, 1875 (38 Vict., ch. 18), which empowered the Queen in council, being satisfied that other powers concerned had made or would make the like regulations as to their ships and subjects, to prescribe a close time for the seal fishery in the area included between the parallels of 67° and 75° north latitude, and the meridians of 5° east and 17° west longitude from Greenwich,

covering an area of about 285,000 square miles. On November 28, 1876, an order in council was made bringing the act into operation and fixing the 3d of April in each year as the earliest day on which it should be lawful to take seals in that region. Concurrent action was taken by Denmark, the Netherlands, Norway, and Sweden; but, despite these regulations, the fishery has gradually declined, and since 1900 relatively few seals have been taken in these waters. So far as we are aware, this is the only instance in which Norway has acted in concert with other nations in regulating any branch of the fisheries on the high seas other than those designed for protecting submarine cables.

#### EXTENSION OF TERRITORIAL JURISDICTION.

As has been set forth in the first chapter of this paper, a nation can not independently establish any regulations over fisheries prosecuted by foreigners on the high seas. Each nation legislates for itself, and its regulations can operate on its subjects alone.

But has a state no power whatever to safeguard its marginal fishery resources by regulations applicable on the adjacent high seas to foreigners as well as to subjects? If the marginal resources are jeopardized by some very destructive procedure of foreign fishermen immediately outside territorial waters, would not international law sanction interference with those operations in order to preserve sustenance and livelihood to the coastal population? Even as nations now exercise jurisdiction over foreign vessels beyond the marine league for enforcing quarantine and revenue laws, may not authority somewhat analogous be exercised to preserve the fishery resources within the marine belt?

This principle of interference and protection, applied to a concrete case was the chief contention of the United States before the Bering Sea tribunal in 1893; and the assumption of such authority is greatly discredited by the decision in that case, which must be regarded as an authoritative declaration of international law. It is universally admitted that pelagic sealing is highly destructive and threatens the existence of the fur seals in the territorial waters and on the shores of the United States, to the great loss and injury of American subjects; and yet it was decided that the nation is powerless to prevent their destruction by foreign fishermen. Indeed, unless there be special agreement to the contrary, foreign fishermen may remain just outside the marine league and slaughter every seal that ventures that far from the shore, even to the last member of the herd, and the American Government is without authority to interfere. A similar condition exists about the Russian islands, and the Japanese fishermen endeavor to make the most of their rights in this respect, off the American as well as the Russian shores.

The recent action of the British Government in excluding foreign fishermen from trawling in the Firth of Moray, on the eastern coast of Scotland, seems at variance with the conclusions of the Bering Sea tribunal. In 1889 (52 and 53 Vict., ch. 23, July 26, 1889), Parliament authorized the Fishery Board for Scotland,

for the purpose of protecting the spawning grounds, to interdict trawling within a line drawn from Duncansby Head, in Caithness, to Rattray Point, in Aberdeenshire, a distance of 85 miles, inclosing an area of about 1,700 square miles outside the British maritime belt, all of which had been defined as a part of the high seas in the North Sea convention of 1882. Although neither the statute nor the by-law made, confirmed, and published thereunder was explicit on this point, it was generally understood—indeed, semiofficial expressions seemed to justify the construction—that this enactment applied solely to British subjects, and had no reference to the operations of foreign fishermen.

In November, 1905, Emmanuel Mortensen, captain of a Norwegian vessel, the *Niobe*, was arrested and charged with trawling in Moray Firth about 5 miles from land, contrary to this by-law. When found guilty in the lower court, the defendant appealed the case<sup>a</sup> on the ground of nonjurisdiction of the court, the alleged offense having been committed on the high seas 5 miles from land. After able argument on each side, the court dismissed the appeal on the ground that as Parliament had, apparently from the enactment, assumed jurisdiction over the water in question for the purpose of regulating the fisheries, the court was bound to give effect to its terms, and that it was not for the court to question whether the legislature had done what foreign powers might consider an usurpation.<sup>b</sup> Owing to her peculiar policy in regard to wide claims over marginal waters, no exception was taken to the action of the British Government by the Kingdom of Norway, to which country the arrested vessel belonged; and as no other nation was concerned in that particular case, the claim to jurisdiction has not been brought into international review, where possibly it would share the fate of several previous attempts to extend jurisdiction beyond the marine league.<sup>c</sup>

<sup>a</sup> *Mortensen v. Peters* (High Court of Judiciary, full bench). Reported in *The Scots Law Times*, vol. xiv, p. 227, August 4, 1906.

<sup>b</sup> This decision is in accord with the rule in this country, where in a controversy between the United States and a foreign nation as to boundary, the courts follow the decision of those departments of the Government to which the assertion of its interests against foreign powers is confided, i. e., the legislative and executive. (Moore, *Digest of International Law*, sec. 154.)

<sup>c</sup> Indeed, the opinion has been expressed by eminent authorities that seizures beyond the marine league for revenue purposes can not be sustained as a right, and that revenue laws authorizing such action are enforceable at peril, and rest on the tacit permission of the states whose vessels may be seized. In his opinion given to the Sardinian Government in the case of the *Cagliari*, Sir Travers Twiss added: "In ordinary cases, indeed, where a merchant ship has been seized on the high seas, the sovereign whose flag has been violated waives his privilege, considering the offending ship to have acted with mala fides toward the other state with which he is in amity, and to have consequently forfeited any just claim to his protection." And Dana writes: "Doubtless states have made laws for revenue purposes touching acts done beyond territorial waters, but it will not be found that in later times the right to make seizures beyond such waters has been insisted upon against the remonstrance of foreign states, or that a clear and unequivocal judicial precedent now stands sustaining such seizures when the question of jurisdiction has been presented." And he adds, in the same connection: "It may be said that the principle is settled that municipal seizures can not be made for any purpose beyond territorial waters. It is also settled that the limit of these waters is, in the absence of treaty, the marine league or the cannon shot." (Dana, note 108, *Wheaton's International Law*, sec. 179, p. 258-260.)

The action of the British Government appears inconsistent with its attitude in the Bering Sea controversy, and seems to be a revival of the view taken a century ago by our own Chancellor Kent, who suggested that, considering the length and characteristics of the American coasts, the United States might claim control of the waters included within lines stretching from distant headlands, as, for instance, from Cape Ann to Cape Cod, from Nantucket to Montauk Point, from Montauk Point to the capes of Delaware, and from the South Cape of Florida to the Mississippi;<sup>a</sup> but which was said by Woolsey to be "out of character for a nation that has ever asserted the freedom of doubtful waters, as well as contrary to the spirit of more recent times,"<sup>b</sup> and has never been accepted as an expression of the policy of the American Government.

As a purely academic proposition, instances could be suggested in which it might seem that a nation would be warranted in interfering with some novel and highly destructive method of fishery employed contiguous to her marginal seas. For instance, it is not to be supposed that any of the countries bordering the North Sea would willingly tolerate the use of large quantities of poison or of dynamite in taking fish in those waters, or that similar destructive methods would be permitted on the Newfoundland banks, even though these vicious acts should be committed by foreigners operating more than 3 miles from land and with the approval of their Government. But in the light of the Bering Sea decision, very slight is the probability of an instance actually arising in which a nation would unquestionably be justified in interfering with a method of fishery prosecuted by foreigners on the high seas, for no single nation may arrogate to itself executive power for the enforcement of international law. The provocation would have to be so great as to threaten the very existence of its people, and it is scarcely presumable that a foreign government would permit its subjects thus to injure the resources of a friendly state, for the public opinion of the civilized world enforces submission from every nation. Obviously the exercise of this authority for a merely beneficial restriction or regulation would likely soon become the basis of complete jurisdiction over that particular area, and it would probably not be long before, through one pretext or another, the principal fishing grounds of the world would pass under control of individual powers. And, to quote the words of Dr. C. N. Gregory: "No right to regulate what belongs to all nations can be conceded to one nation, however large her interests or enlightened her councils."<sup>c</sup>

For the preservation of the coastal fisheries, as well as for the more important matters of national defense and safety, the opinion is growing that the present limit of the marginal belt is too narrow and that it should be extended considerably beyond the present distance of 3 miles. As already set forth

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<sup>a</sup> Kent, Commentaries on American Law, vol. I, sec. 29, 30.

<sup>b</sup> Woolsey, International Law, sec. 60.

<sup>c</sup> American Political Science Review, May, 1907, p. 436.

herein, the marine league had its origin in the range of cannon, which determines the distance over which a nation is able to exercise jurisdiction from the shore. As the efficiency of cannon has greatly increased, and is now considerably more than 3 miles, it is urged that the width of the maritime belt should increase correspondingly. In recent years most of the writers on international law have expressed views favorable to this extension.

As written by Oppenheim, one of the most recent and likewise interesting of all writers on international jurisprudence: "Although many states, in municipal laws and international treaties, still adhere to a breadth of one marine league, the time will come when by a common agreement of the states such breadth will be very much extended."<sup>a</sup>

The learned editor of the 1904 edition of Hall's International Law expresses the view that "it is desirable for a state to have control over a larger space of water for the purpose of regulating and preserving the fisheries, the productiveness of sea fisheries being seriously threatened by the destructive methods of fishing which are commonly employed."<sup>b</sup>

The extension of the marginal belt was discussed by the Institut de Droit International at its meeting in Paris in 1904. The general opinion was that such an extension was desirable, and it was agreed *nemine contradicente* to recommend an increase to 6 miles, after the proposal to extend it to 10 miles had been rejected by 25 votes against 10.<sup>c</sup>

In view, however, of the approval which the 3-mile margin has received in international conventions, legislative bodies, and judicial tribunals, the indefiniteness of centuries ago has become the vested rights of to-day, the once plastic cement which the workmen molded has now become so set and solidified with the passage of time that it is useless to discuss an extension of the distance of exclusive jurisdiction without absolute international agreement. It can not be denied that such an extension would be vigorously opposed by some influential interests. The trawl fishermen of Great Britain, for instance, would unquestionably object to it, and for very practical reasons. Exclusive of the White Sea and the Baltic, the trawling area outside the 3-mile limit of northern and western Europe approximates 450,000 square miles. An extension of the marginal belt 6 miles would place 81,000 square miles of this area within the territorial jurisdiction of continental countries, and an extension of 4 miles farther would exclude British fishermen from 135,000 square miles of the best trawling grounds, an area nearly equal to that of the North Sea. As the British trawling fleet greatly exceeds that of all the continental countries, the fishermen of Great Britain would have much to lose and nothing to gain by the extension. On this side of the Atlantic acceptance of the exten-

<sup>a</sup> Oppenheim, *International Law*, London, 1905, vol. I, sec. 186.

<sup>b</sup> Page 152.

<sup>c</sup> Institut de Droit International, *Annuaire* (1894-1895), t. XIII, p. 290, 328-331.

sion would depend very largely on how it would affect the rights and treaty privileges of the United States along the shores of the British Provinces, which possibly far more than any other factor has influenced the present firm position of this Government respecting a marginal belt of a marine league only.<sup>a</sup>

Probably more important from an economic point of view than several miles increase in the width of the marine belt is a clear and unquestioned international recognition of vested rights in attempts to exploit and develop definite areas of sea bottom under the high seas, as in the cultivation of sponges, corals, pearl oysters, etc. There is a distinction in law as well as in fact between such an industry and a fishery dependent on the pursuit of free-swimming fishes in the ocean. Oysters, sponges, and the like represent a peculiar kind of property. They are not *feræ naturæ*, as they do not stray, nor do they require taming, hence ownership may be acquired in them.

It can not be affirmed that this extension of territorial jurisdiction to sea bottoms which are devoted to the cultivation of sponges, mollusks, etc., has ever been made the basis of any treaty or agreement, or has even been the subject of diplomatic discussion. With the single exception of Vattel, the older writers on international law were silent on this matter, and even Vattel seems not to have clearly distinguished it from the exercise of jurisdiction over migratory fishes in the seas near the marginal belt,<sup>b</sup> a doctrine which has long since been discredited.

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<sup>a</sup> The attitude of the United States in this matter was well expressed by Mr. Olney, when Secretary of State: "This Government would not be indisposed, should a sufficient number of maritime powers concur in the proposition, to take part in an endeavor to reach an accord having the force and effect of international law as well as of conventional regulation, by which the territorial jurisdiction of a state, bounded by the high seas, should henceforth extend 6 nautical miles from low-water mark, and at the same time providing that this 6-mile limit shall also be that of the neutral maritime zone. I am unable, however, to express the views of this Government upon the subject more precisely at the present time, in view of the important consideration to be given to the question of the effect of such a modification of existing international and conventional law upon the jurisdictional boundaries of adjacent states and the application of existing treaties in respect to the doctrine of headlands and bays. I need scarcely observe to you that an extension of the headland doctrine, by making territorial all bays situated within promontories 12 miles apart instead of 6, would affect bodies of water now deemed to be high seas and whose use is the subject of existing conventional stipulations." (Letter to Mr. de Weckherlin, Dutch minister, February 15, 1896. And we may also refer in this connection to the letter of Mr. Secretary Seward to the Spanish minister, quoted on p. 107.)

<sup>b</sup> Said Vattel: "Who can doubt that the pearl fishery of Bahren and Ceylon may not lawfully be enjoyed as property? And though a fishery for food appears more inexhaustible, if a nation has a fishery on its coasts that is particularly advantageous, and of which it may become master, shall it not be permitted to appropriate this natural advantage to itself, as a dependence on the country it possesses; and, if there are a sufficient number of fish to furnish the neighboring nations, of reserving to itself the great advantage it may receive from them by commerce? But if, so far from taking possession of it, it has once acknowledged the common right of other nations to come and fish there, it can no longer exclude them from it; it has left that fishery in its primitive freedom, at least with respect to those who have been in possession of it. The English not having taken the advantage from the beginning of the herring fishery on their coast, it is become common to them with other nations." (Vattel, *Le Droit des Gens*, lib. 1, ch. 23, sec. 28.)

Very natural, however, was the silence of the older publicists on this subject, since there was no occasion for recognition of this view until a very recent period. The spirit of scientific investigation and of industrial development is everywhere, and in few directions have these made greater progress in the last score or two of years than in the possibilities of cultivating the sea bottoms. Millions of dollars worth of oysters are now grown on areas which thirty years ago were barren wastes. Biologists are obtaining excellent results in sponge culture in the Gulf of Mexico, and in coral growth in the Mediterranean. Careful observers are awakening to the possibilities of pearl culture, not simply to raise the mollusks which yield pearls fitfully and at rare intervals, but to insure and to increase the yield of pearls within these mollusks, and thus to obtain remunerative returns without the arduous toil and the element of hazard inseparable from pearling as now prosecuted. And must the work of these investigators, must the enterprises which they stimulate, be restricted to the bounds of the marine league, while the broad areas of shallow bays and gulfs remain barren? Must we plant and harvest but along the hedgerows of the maritime belt and leave the rich meadows of the sea bottoms to waste? Must the work be handicapped by the refusal of international law to concede to these enterprises the elements of private ownership, which must be wholly lacking unless territorial jurisdiction apply to the areas which they exploit?

Numerous instances exist in which fisheries for pearl oysters, etc., prosecuted beyond the marginal belt, are the subject of fostering care on the part of a government or its people. By careful supervision as to close seasons, size limits, etc., and in some cases special preparation of the bottom and even removal of predacious enemies, the output from these areas is conserved and increased. Instances of this kind under state authority or recognition may be regarded as an occupation of the bed of the sea, and territorial jurisdiction should rightly extend to them, even though they be carried on beyond the marginal belt ordinarily recognized by international law. Even Grotius' "Mare Liberum" is founded upon the old doctrine of Roman law that there can be no property in anything without occupation. And while the vagrant waters of the ocean can not be subjected and occupied, the sponge beds and pearl reefs can be, even as the hills and the mountains.

It is not difficult to find opinions and analogies among the authorities tending to the view that international law would extend protection to enterprises under state authority for cultivating the sea bottom without any question as to whether the strict territorial limits have been exceeded. Even as a nation, by building a light-house upon the bed of a rock or upon piles driven into the bed of the sea, acquires territorial jurisdiction over the space thus occupied, so it would seem that a portion of the bed of the sea might be exploited and occupied in like manner, and that ordinary territorial law would apply to it.

In the celebrated *Franconia* case,<sup>a</sup> Chief Justice Cockburn, of England, noted that a portion of the bed of the sea, where it could be physically, permanently occupied, might be subject to occupation in the same way as unoccupied territory. And as said by Vattel, the most popular and in many respects the most just of the writers on the law of nations: "Qui doutera que les pêcheries de Bahrein et de Ceylon ne puissent legitiment tomber en propriété?"<sup>b</sup>

This view is founded not only on justice but likewise on necessity. Man's eagerness has so nearly exhausted the easily exploited resources that fostering care is essential to the best development and use of the sea bottom. Left to the chance of nature and subject to despoilment by every one without hindrance, these areas would remain barren wastes. Law and government are for the benefit of humanity. The aim of international law is the welfare and happiness of the general society of mankind, and this would not be promoted by a policy which would keep the sea bottoms forever unproductive. The reason for the freedom of the high seas is the freedom of intercourse and commerce between the states, the seas being the common highway; and a recognition of the occupancy by an individual nation of so much of the sea bottom as it may actually improve and develop does not impair the perfect freedom of navigation by vessels of all nations, as this occupancy is subordinate to the right of navigation and can not be exercised in derogation thereof.

Necessarily in the recognition of this jurisdiction the interests of the various states should be carefully guarded, and especially of those near the areas to be exploited. Within general limits the right of exploitation and development must be reserved to the nation within whose sphere of influence the particular area is situated, for it would be manifestly unjust, indeed extremely unwise, to establish a principle by which a nation could appropriate to itself a resource off the shores of a less enterprising country. The privilege of exploiting the sea bottom in the whole of the Gulf of California, for instance, should undoubtedly rest with the Mexican people; Ceylon and British India should have control of that in the Gulf of Manar, and the riparian states should possess those in the Persian Gulf and the Red Sea.

#### PRESERVATION OF THE FISHERIES ON THE HIGH SEAS.

The fisheries prosecuted on the high seas are of vast economic importance; they furnish a livelihood to a large number of persons, and yield food products of great value in the sustenance of the human race. Unlike the mineral and the agricultural resources, this wealth can not be appropriated and conserved by individual enterprise, but must in a very large measure be maintained for the use of the people in common. Thus the governments of the world are in a just sense the trustees for the management of this great wealth, this common field where all reap and none sow, where all harvest and none plant.

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<sup>a</sup> *Queen v. Keyn*, L. R. 2 Excheq. Div., 63 (Nov. 11 and 13, 1876).

<sup>b</sup> Vattel, *Le Droit des Gens*, t. 1, ch. 23, sec. 28.

While at present the high seas yield about 1 per cent of the food of man, an examination of the conditions leads to the belief that there are potentialities of an enormous increase. All animal nutrition may be traced to a vegetable origin. Although marine vegetation does not grow in forest-like masses, yet owing to its distribution at different depths and to the extensive area of the seas, its production probably exceeds that on land. Practically all of it is available for animal nutrition, whereas a very considerable part of land vegetation is not available for food. Thus marine vegetation either directly or indirectly supports a great quantity of animal life, which in aggregate weight doubtless equals the continental animals. In consideration of these conditions, it seems that when the increase in population of the earth requires much more thorough utilization of our resources, the draft on the seas will be vastly increased and they will be far more important factors in the food problems of mankind.

It is to the common interest of all nations to prevent indiscriminate destruction and consequent extermination of resources which contribute so extensively to the commercial wealth and general use of mankind. Useless destruction is a crime against posterity. Doubtless a century hence no policy of our great President will add more largely to his credit than his efforts toward preserving the natural resources, and no branch of these resources calls for more thorough international consideration and action than the resources of the high seas.

Upon the subject of the preservation of these resources, so that their yield may continue undiminished, there is so much that is appropriate to be said that one is lost in the abundance of it. The animal and vegetable products of the seas differ almost as widely in their characteristics and needs as those on land, and equally diversified and complicated are the problems concerning the most favorable conditions of their production and development. But within the limits of this paper it is possible to discuss these questions only in the most general way.

Fortunately the problem of sewage pollution, doubtless the greatest destructive factor in the inland and the coastal fisheries, has little or no existence in a consideration of the resources of the high seas.

From the standpoint of protective needs, the fishery products of the high seas may be roughly divided into four general classes, viz: (1) The migratory species, such as herring, mackerel, bluefish, etc.; (2) the bottom or demersal species, such as cod, haddock, flounder, and flatfish, which are less migratory in their habits and remain in the same general locality; (3) the aquatic mammals; and (4) those products which are fixed to the bottom and are susceptible of ownership, as sponges, pearl oysters, etc.

As regards the migratory fishes, there is an increasing belief that serious impairment of these species is beyond our present demands on them, and that

the present destruction effected by man is but child's play compared with nature's work in that direction. Many states from time to time have enacted restrictive legislation with a view to preserving them, but estimation of the beneficial effect of these regulations is generally discredited, at least so far as concerns the present extent of the draft on these resources.

For the purpose of protecting the spawning mackerel in their spring migration the United States, in 1887, indirectly restricted their capture for a period of five years, beginning March 1, 1888. The enactment interdicted not the fishing itself, but the importation of the fish, and applied to those caught on the high seas by foreign fishermen as well as to the catch by American citizens. It provided that "for the period of five years from and after the first day of March, 1888, no mackerel, other than what is known as Spanish mackerel, caught between the first day of March and the first day of June, inclusive of each year, shall be imported into the United States or landed upon its shores: *Provided, however,* That nothing in this act shall be held to apply to mackerel caught with hook and line from boats, and landed in said boats, or in traps and weirs connected with the shore."

This enactment was intended especially to prohibit the capture of mackerel during the period noted by means of purse seines operated from American vessels. The following summary, from an able article on this subject by Dr. H. M. Smith,<sup>a</sup> shows the extent of this fishery during the three years immediately preceding the period to which this enactment applied and during the six years following:

STATEMENT SHOWING THE EXTENT OF THE AMERICAN PURSE-SEINE FISHERY FOR FRESH MACKEREL FROM MARCH 1 TO MAY 31, INCLUSIVE, DURING A SERIES OF YEARS.

Year. <sup>a</sup>	Vessels fishing.	Fresh mackerel landed.	
	Number.	Number.	Value.
1885	175	31,250,000	\$273,500
1886	150	2,739,370	78,507
1887	105	3,500,000	86,805
1893	60	200,190	21,000
1894	50	160,550	10,919
1895	38	121,050	14,261
1896	39	317,000	41,790
1897	84	1,491,255	107,242
1898	44	102,545	19,764

<sup>a</sup> No fishing in 1888-1892, according to law.

From this summary it appears that practically no beneficial effect can be attributed to the enactment, the average annual yield in the three years preceding its enforcement being 12,496,457 fish, or 87,114 per vessel, while the average during the six years following the closed period was only 398,765 mack-

<sup>a</sup> The southern spring mackerel fishery, Bulletin United States Fish Commission, vol. xviii, p. 270.

erel, or 7,596 per vessel employed. Those who favor restriction on the sea fisheries claim that the length of the closed season and the period of years which the restriction covered were too short for favorable results.

Other prominent enactments of a similar nature were the numerous herring restrictions in England, Scotland, and some of the continental countries, and especially the herring and mackerel protective regulations resulting from the Anglo-French convention of 1839. But it does not appear that these regulations had any effect whatever on the increase or the decrease of these migratory fishes, which seem to depend on such natural causes as fluctuations in food supply, the destruction of brood by storms, etc., and that the abundance of the fishes themselves can not be seriously affected by restrictive legislation so long as the present conditions of supply and demand exist.

Since this legislation interferes with the established uses and customs of the fishermen, the burden is upon those who advocate it to prove that the benefit will outweigh the inconvenience. Ever since the influential voice of Huxley was lifted in its defense,<sup>a</sup> the policy of unrestricted use of the migratory species has continued to grow. This view has been strongly supported by Prof. W. C. McIntosh in Great Britain, by Dr. Hjort and Dr. Dahl in Norway, by Prof. Baird, Dr. Goode, and Mr. Eugene Blackford<sup>b</sup> in America, and by many other eminent authorities.

So far as regards the demersal or bottom fishes—the cod, haddock, halibut, flatfish, etc.—our present knowledge of the remedial effects of fishery restriction is so slight as scarcely to furnish a satisfactory basis for even national legislation in territorial waters, much less for complicated international regulations. A review of these regulations already established shows that the arrangement of joint action is a tedious and difficult matter, and ratification of the convention is always uncertain. Indeed, except so far as concerns the police of the fisheries,

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<sup>a</sup> "The best thing for governments to do in relation to the herring fisheries is to let them alone, except in so far as the police of the sea is concerned. With this proviso let people fish how they like, as they like, and when they like. There is not a particle of evidence that anything man does has an appreciable influence on the stock of herrings. It will be time to meddle when any satisfactory evidence that mischief is being done is produced." (Huxley, in *Popular Science Monthly*, August, 1881.)

And again: "Every legislative restriction means the creation of a new offense. In the case of fishery, it means that a simple man of the people, earning a scanty livelihood by hard toil, shall be liable to fine and imprisonment for doing that which he and his fathers before him have, up to that time, been free to do. If the general interest requires that this burden should be put upon the fishermen—well and good. But if it does not—if indeed there is any doubt about the matter, I think that the man who made the unnecessary law deserves a heavier punishment than the man who breaks it." (Huxley, "Inaugural Address," *International Fisheries Exhibition* (London), 1883.)

<sup>b</sup> In testifying before a United States Senate committee in 1886, the late Mr. Blackford, who was one of the best informed fish dealers this or any other country has produced, stated that formerly he had thought protection necessary for the mackerel and other ocean fishes, "but when I got my material all together, I found the facts were entirely opposite to the views which I had entertained, and the more I looked into the subject the more I became impressed that there was no necessity for legislation for the protection of any of the free-swimming open-sea fishes." (*Bulletin United States Fish Commission*, vol. XVIII, p. 212.)

it does not appear that great practical benefit has resulted from the regulations for preserving the fisheries on the high seas.

It is easy to exaggerate the evil effects of fishing on the bottom species. Nearly six centuries ago, in England under Edward III, there was an agitation against the use of beam trawls, and petitions in Parliament gave visions of the speedy and complete ruin of the fisheries unless the use of this form of apparatus was interdicted; and yet trawling has continued undiminished from that time; indeed, it has never been more extensive than in recent years, and the sea has continually repaired the loss.

In 1890 there was a conference of representatives of European nations to discuss the question of remedial measures for the preservation of the demersal fishes of the deep seas about Europe. This conference was held at London, under the auspices of the National Sea Fisheries Protective Association, and was attended by delegates from Belgium, Denmark, France, Germany, Great Britain, the Netherlands, and Spain. It was unofficial in the sense that the Governments were not bound by its conclusions, but the delegates were among the most prominent officials connected with the fishery service of their respective countries.

The conference had particular reference to some arrangement for saving the small or immature flatfish and especially those taken by means of beam or otter trawls.<sup>a</sup> The discussion related especially to the need for such action and to the particular species which required protection; also to the desirability for protecting the spawning fish and for reserving certain portions of the North Sea for breeding purposes, at least for a portion of the year.

There was a general consensus of opinion as to the desirability of restraint on the capture of undersized flatfish, but it was not found practicable to arrive at definite recommendation to the several Governments leading to an international agreement or arrangement. However, the following resolutions were adopted:

That this conference considers it desirable that an official international conference of European maritime powers should be held with the view of concluding a convention for the prohibition of the landing and sale of undersized flatfish within their respective jurisdictions.

This conference, moreover, considers it desirable that, before the official conference meets, the different nations interested in the sea fisheries of European waters will col-

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<sup>a</sup> The chief proposals for dealing with the capture of immature fish were thus summarized by Sir Thomas Boyd, chairman of the Fishery Board for Scotland: (1) Simply to prevent the sale of fish under a fixed size, without in any way interfering with the mode of fishing or the place of fishing. The disadvantage is that such a measure would not prevent their capture and destruction, since they must be taken in the ordinary way of fishing; (2) besides prohibiting their sale, to make regulations with the object of preventing their capture or destruction, viz: (a) By closing certain areas where young fish are supposed to be especially abundant; (b) by enlarging the mesh of the nets and fixing by law a minimum size of mesh. This would be a useful measure, and would enable many immature fish to escape, but large numbers would still be retained; (c) by compelling trawlers and line fishermen to return undersized fish to the sea in such a condition that they would live.

lect, with as little delay as possible, sufficient information, scientific as well as statistical, with regard to the damage done by the capture of undersized fish by their fishermen.

That the National Sea Fisheries Protective Association be requested to formulate a set of questions with a view to obtaining scientific and statistical information in relation to undersized fish and forward it to each delegate, in order that he may submit it to his Government for adoption.

No international action has yet come of this conference, but several of the nations have acted independently in the matter and interdicted the sale of undersized fish.

The Belgian Government, by royal decree dated September 5, 1892, prohibited fish under certain sizes from being landed, transported, sold, or exposed for sale in Belgium, without distinction as to the place of capture (*sans distinction de leur provenance*) or as to the nationality of the boat which caught them. The sizes specified are 25 centimeters for turbot, brill, ray, halibut, cod, and haddock, and 18 centimeters for soles, dab, plaice, and whiting, these measurements covering the extreme length of the fish.

Somewhat similar provisions were enacted in Denmark by law of April 5, 1888.<sup>a</sup> The declaration of 1907, supplementary to the convention of 1890 between Sweden and Denmark, which restricted the capture and sale of plaice under a designated length, has already been noted at length in the discussion of that convention. Other states with undersize fish laws are France, Germany, Holland, Sweden, Norway with reference to lobsters, England with reference to lobsters and crabs, and many of the American states, especially with respect to crustaceans and mollusks.

The principal effect in Great Britain of the conference of 1890 was the appointment of a select committee in the House of Commons to consider the expediency of adopting measures for the preservation of the fisheries "in the seas around the British Islands, including the prohibition of the capture, landing, or sale of undersized sea fish, the prohibition of the sale or possession of certain sea fish during the periods when their capture is forbidden, the fixing of close seasons, the prohibition or regulation of certain methods of fishing, the protection of defined areas, and other like regulations, international or otherwise."

For the purpose of determining the best regulations for preserving the fishery resources with the maximum extent of their utilization, it is not easy to exaggerate the importance of systematic research in marine biology and the effect of fishing operations. Excellent work of this nature has been done and is yet in progress in many countries where the fisheries are of great extent.

<sup>a</sup> Section 15 of this law provided that no trade may be carried on in Bornholm salmon under 3 pounds, trout under one-half pound, cod under one-fourth pound, and turbot under one-half pound; and section 56 of the same law prohibited the purchase and sale of eels, pike, and salmon less than 12 inches; of cod, whiting, plaice, turbot, brill, bream, tench, trout, and gwiniad less than 8 inches; and of dab, flounder, perch, and bleak less than 6 inches measured from the point of the fore snout to the root of the caudal fin.

The sentiment favorable to this research has moreover surpassed the bounds of national jurisdiction and become international in its scope. Prominent among such investigations are those conducted by the Joint Commission—commonly known as the Rathbun-Wakeham Commission—appointed December 6, 1892, on behalf of the United States and Great Britain relative to the prevention of destructive methods of fishing and to the preservation of the fisheries in the waters contiguous to the United States and Canada. The interesting and valuable report of this commission, presented in 1896,<sup>a</sup> furnishes much practical data relative to the legislative needs of our border fisheries.

On April 11, 1909, a treaty was concluded between Great Britain and the United States for the purpose of arranging uniform regulations in these waters; and a thorough examination of the present condition and needs of these fisheries is now being made by Dr. David S. Jordan, assisted by Dr. Barton W. Evermann, on the part of the American Government, and by Prof. E. E. Prince, who succeeded Mr. S. T. Bastedo, on the part of the British Government. The report of these commissioners, to be made in June, 1909, is awaited with much interest, and it is hoped that favorable action thereon will result in great benefit to the fishery interests of both Canada and the United States.

Even more extensive are the joint investigations now in progress in the seas north of Europe. In 1899 the Government of Sweden extended to the nations prominently interested in those fisheries an invitation to attend a conference for the purpose of uniting on some plan of international research. This resulted in a gathering at Stockholm in June, 1899, of representatives from Great Britain, Germany, Russia, Denmark, the Netherlands, Norway, and Sweden. A second conference of representatives of the same powers was held in May, 1901, at Christiania on invitation of the Norwegian Government. The result of these conferences was the recommendation of a scheme of investigation to the attention of the states interested. This scheme was accepted by each of these nations, and the several legislatures appropriated a sum of money for inaugurating the work. At a conference in Copenhagen in July, 1902, representatives of the contributing states established the "International Council for the Exploration of the Sea." This international research is yet in progress, and the results already obtained fully justify its establishment.

However we may view the protective needs of the migratory and the demersal fishes, the situation is quite different with respect to the sea mammals—the seals, walrus, manatees, sea otters, and many species of whales. These animals are approaching practical exhaustion with great rapidity, and prompt action seems necessary if they are to be reserved from extinction. This is not the language of exaggeration. Under the influence of the bounty which industrial use offers of \$40 for the life of a fur seal, \$300 for a sea otter, and \$5,000 for an arctic whale, these animals are passing away far more rapidly than is generally

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<sup>a</sup> H. Doc. 315, 54th Cong., 2d sess.

realized, the entire annual product of sea otters throughout the world now approximating only 200 and of the arctic whales less than 100 each year. The timid whalebone whales have been swept from the navigable seas and are nowhere to be found except in the most remote ice fields of the frigid zones, the recent decrease having been in geometric ratio owing to modern inventions—to steam vessels, electric lights, and especially to the shot harpoon. The walrus are almost exterminated in the seas north of Europe, and in Bering Sea, where they were formerly so plentiful, they are to be found only in one small herd, which hauls out in the spring and falls on the islets off Port Heiden, on the Alaska peninsula.

It is shocking to contemplate the indifference with which the civilized world has witnessed, nay, not only witnessed but encouraged, the slaughter, almost to the point of extinction, of highly organized animals evidencing traits of affection and devotion which would do honor to human beings. Everywhere, in every sea, it is the same story, slaughter, slaughter, slaughter. What more pathetic sight in the whole range of man's ruthless destruction than the thousands of nursing fur seals starving and dead at the present moment on the shores of the Pacific islands as a result of the inhuman butchery of their nurture-seeking mothers in the waters of Bering Sea and the North Pacific. At the present rate of decrease the day is not far distant when these will have become as extinct as the buffalo of the American prairies.

Let it not be understood that our sympathy for the highly organized creatures of the sea would withhold them from industrial use. The slaughter of animals under proper conditions, whether they be in the seas or under domestic care, does not in itself constitute needless cruelty, for the end of every individual, beast or human, is pathetic, whether it be brought about by sudden accident or through the waste of years. When this slaughter is so conducted that it is conservative utilization, with due care for the welfare and perpetuation of the species as a whole, it is but the most intelligent application of nature's wisest law of the survival of the fittest. The preservation which we would extend to these animals is largely for the purpose of their greater slaughter. We would surround them with such protection and take them only under such conditions as would tend to increase their numbers and thus make them of far greater value to the hardy fishermen whose industry has won renown in all ages.

It is hoped that the wide public interest attracted to the preservation of our natural resources will result in preventing the now imminent extermination of these species, whose zoologic and philosophic worth far exceeds their economic value; and it seems that this Fishery Congress faces no more important duty than that of adding the weight of its great influence in staying the inhuman hand of destruction and extermination. Already this subject is attracting attention in America, and during the last twelve months resolutions favoring action for the preservation of these animals were adopted by a number of scientific

societies, including the New York Zoological Society, the American Society of Vertebrate Paleontologists, and the American Society for the Advancement of Science. These resolutions were closely similar. That of the last-named society was as follows:

*Resolved*, That the American Society for the Advancement of Science will aid in any way practicable those measures legislative, international and local, which will prevent the now imminent extermination of the great marine vertebrates, especially the cetaceans and manatees, seals, green and other turtles on the coasts of the United States, or on the high seas.

It is beyond the limits of this paper to outline the proper direction of the efforts to preserve these resources. But in view of the fact that the fisheries on the high seas represent the greatest economic resource which the nations of the world hold in common for their joint use, it seems that there might be wisdom in a general treaty or international union for their consideration. Already there are several treaties of this nature with special international offices for the purpose of satisfying economic and other nonpolitical interests, such as the Universal Postal Union, established in 1874, the Union for the Protection of Industrial Property in 1883, and the Union for the Protection of Works of Literature and Art in 1886. More closely allied to our subject is the convention in behalf of the preservation of wild animals, birds, and fish in Africa, which was signed in London on May 19, 1900,<sup>a</sup> by France, Germany, Great Britain, Italy, Portugal, Spain, and the Kongo Free State.

And in this gathering of representatives from so many powerful states, what subject more worthy of consideration than the economic conservation of the resources of the seas. A brotherhood of great nations arranging not the partition of nature's inheritance among themselves for speedy waste and despoilment, but the preservation of that inheritance for beneficial use in common by all the people of the earth; each to draw upon that storehouse of wealth only in accordance with the common welfare of all, for the sustenance of its citizens, for the comfort of its people, and for the advancement of civilization throughout the world.

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<sup>a</sup> See Martens, *Nouveau Recueil Général de Traités et autres Actes relatifs aux Rapports de Droit international*. Deuxième série, t. xxx, p. 430.

## APPENDIXES.



### APPENDIX A.

*Regulations for the Guidance of the fishermen of Great Britain and of France, in the seas lying between the coasts of the two countries; prepared in pursuance of the provisions of the eleventh Article of the Convention concluded at Paris on the 2d of August, 1839, between Her Majesty and the King of the French.*

ARTICLE I. British and French subjects fishing in the seas lying between the coasts of the United Kingdom of Great Britain and Ireland and those of the Kingdom of France shall conform to the following Regulations.

ART. II. The limits within which the general right of fishery is exclusively reserved to the subjects of the two Kingdoms respectively are fixed (with the exception of those in Granville Bay) at three miles distance from low-water mark.

With respect to bays the mouths of which do not exceed ten miles in width, the three-mile distance is measured from a straight line drawn from headland to headland.

ART. III. The miles mentioned in the present Regulations are geographical miles, of which sixty make a degree of latitude.

ART. IV. The fishery limits of Granville Bay, established upon special principles, are defined in the first Article of the Convention of the second of August, one thousand eight hundred and thirty-nine, as follow:

The lines drawn between the points designated by the letters A, B, C, D, E, F, G, H, I, K, on the chart annexed to the Convention are acknowledged as defining the limits between which and the French shore the oyster fishery shall be reserved exclusively to French subjects; and these lines are as follow; that is to say:—

The first line runs from the point A, three miles from low-water mark (Point Meinga bearing south), to the point B, of which the landmarks are Agon Tower on with the clump of trees upon Mount Huchon, and the summit of Gros Mont in a line with the signal post on Grand Isle.

The second line runs from the said point B, towards Agon Tower and the clump of trees upon Mount Huchon in the direction north, sixty-four degrees east, until at the point C it brings the windmill of Lingreville to bear due east.

The third line runs from point C, due east towards Lingreville windmill until the Grand Huguenant is brought to bear on the Etat Rock at point D.

The fourth line runs from point D northward, and keeping the Grand Huguenant in one with the Etat Rock, until it intersects at E a line whose landmarks are Agon Tower on with Coustances cathedral.

The fifth line runs eastward from point E to point F, where the steeple of Pirou is brought to bear in a line with the Senequet Rock.

The sixth line runs from point F due north to point G, where the steeple of Blainville is brought in a line with the Senequet Rock.

The seventh line runs from point G (in the direction of Pirou steeple) to point H, where the light-house on Cape Carteret bears north, twenty-four degrees west.

The eighth line runs from point H to point I, nearly abreast of Port Bail; point I having for landmarks the fort of Port Bail in a line with the steeple of Port Bail.

And finally, the ninth line runs from point I to the Three Grunes at point K, where Cape Carteret bears east, ten degrees north, in a line with Barneville church.

All the bearings specified in the present Article are to be taken according to the true meridian and not according to the magnetic meridian.

ART. V. It is forbidden to British fishermen to set their nets or to fish in any manner whatever within the French limits; and it is equally forbidden to French fishermen to set their nets or to fish in any manner whatsoever within the British limits.

ART. VI. All British and French fishing boats shall be numbered.

There shall be a series of numbers for the fishing boats belonging to each Collectorship of Customs in the United Kingdom, and a series of numbers for the fishing boats belonging to each district of Maritime Registry in France; and to these numbers shall be prefixed the initial letters of the names of the respective collectorships or districts.

ART. VII. Whereas there are in the United Kingdom several Collectorships of Customs, and in France several districts of Maritime Registry, the names of which begin with the same letter, in which case the initial letter alone would not suffice; the distinguishing letter or letters for the boats of each collectorship or district shall be designated by the Board of Customs in the United Kingdom and by Ministry of Marine in France.

ART. VIII. The letters and numbers shall be placed on each bow of the boat, three or four inches (eight or ten centimètres French) below the gunnel, and they shall be painted in white oil colour, on a black ground.

For boats of fifteen tons burthen and upward the dimensions of these letters and numbers shall be eighteen inches (forty-five centimètres French) in height, and two and a half inches (six centimètres French) in breadth.

For boats of less than fifteen tons burthen, the dimensions shall be ten inches (twenty-five centimètres French) in height, and one and three-quarter inches (four centimètres French) in breadth.

The same letters and numbers shall also be painted on each side of the mainsail of the boat in black oil colour on white sails, and in white oil colour on tanned or black sails.

These letters and numbers on the sails shall be one-third larger in every way than those placed on the bows of the boat.

ART. IX. In order that the fishing boats of Jersey, Guernsey, and other islands of the same cluster may be distinguished from the fishing boats of the other British islands their numbers shall precede the initial letter of the name of the island to which such boats may belong.

Each of these islands shall have a separate series of numbers.

ART. X. All the buoys, barrels, and principal floats of each net, and all other implements of fishery shall be marked with the same letters and numbers as those of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of nets or other fishing implements may further distinguish them by any private marks they judge proper.

ART. XI. The letters and numbers of British fishing boats shall be inserted on the licenses of those boats, after having been entered in the Registry book kept at the Collectorship of Customs.

The letters and numbers of French fishing boats shall be inserted on the muster rolls of those boats, after being entered in the Registry book kept at the Maritime Registry office.

ART. XII. The licences of British fishing boats and the muster rolls of French fishing boats shall contain the description and tonnage of each boat, as well as the names of its owner and of its master.

ART. XIII. The fishermen of both countries shall, when required, exhibit their licences or muster rolls to the commanders of the fishing cruisers, and to all other persons of either country appointed to superintend the Fisheries.

ART. XIV. The name of each fishing boat and that of the port to which she belongs shall be painted in white oil colour on a black ground on the stern of the said boat, in letters which shall be at least three inches (eight centimètres French) in height and half an inch (twelve millimètres French) in breadth.

ART. XV. It is forbidden to efface, cover, or conceal, in any manner whatsoever, the letters, numbers, and names placed on the boats and on their sails.

ART. XVI. Trawl fishing may be carried on during all seasons in the seas lying between the fishery limits which have been fixed for the two countries.

ART. XVII. Trawls shall be made with nets, the meshes of which shall be at least one inch and three quarters (forty-five millimètres French) square, from knot to knot, along the line.

ART. XVIII. The length of the wooden yard or beam to which the upper part of the mouth of each trawl net shall be fastened shall not exceed thirty-eight feet (eleven mètres five hundred millimètres French).

ART. XIX. The underpart of the trawl net, to a length of ten feet (three mètres French) from its extremity, may be strengthened by rubbing pieces made of old nets; but these rubbing pieces shall be so fastened that they shall not cross or narrow the meshes of the trawl net, which must always remain at least one inch and three quarters (forty-five millimètres French) from knot to knot, along the line, open and unobstructed.

ART. XX. The size of the meshes of any supplementary nets which may be added to trawls shall be at least two inches (fifty millimètres French) square from knot to knot, along the line.

ART. XXI. Such supplementary nets shall be so fitted as not to cross or narrow the meshes of the trawl net, which must always remain at least one inch and three quarters (forty-five millimètres French) from knot to knot, along the line, open and unobstructed.

ART. XXII. The total weight of the two irons or headpieces of a trawl shall not exceed two hundred and eighty-seven pounds (one hundred and thirty kilograms French).

ART. XXIII. The total weight of iron chains or leads used for loading the ground rope of a trawl shall not exceed one hundred and ten pounds (fifty kilograms French).

ART. XXIV. Trawl fishing is forbidden in all places where there are boats engaged in herring or mackerel drift-net fishing.

ART. XXV. Trawl boats shall always keep at a distance of at least three miles from all boats fishing for herring or mackerel with drift nets.

ART. XXVI. Whenever herring or mackerel boats shall commence drift-net fishing in any place whatever, the trawl boats which may be already fishing in such place shall depart therefrom, and shall keep at a distance of at least three miles from the said drift-net herring or mackerel boats.

ART. XXVII. Herring fishing is free all the year round.

ART. XXVIII. The meshes of all nets used for herring fishing shall not be less than one inch (twenty-five millimètres French) square from knot to knot, along the line.

ART. XXIX. Whenever decked herring boats and undecked herring boats shall commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats, except they should prefer going to leeward, to a distance of at least half a mile, to shoot their nets.

ART. XXX. The decked boats on their part shall shoot their nets to leeward of the undecked boats, unless they prefer going to windward, to a distance of at least half a mile, to shoot their nets.

ART. XXXI. When decked boats shall arrive on grounds where fishing is already begun by other boats, among which shall be undecked boats, the decked boats so arriving shall shoot their nets to leeward of the undecked boats, except they should prefer going to windward, to a distance of at least half a mile, to shoot their nets.

ART. XXXII. When undecked boats shall arrive on grounds where fishing is already begun by other boats, among which shall be decked boats, the undecked boats so arriving shall shoot their nets to windward of the decked boats, except they prefer going to leeward, to a distance of at least half a mile, to shoot their nets.

ART. XXXIII. If, however, it should happen that the spot where fishing is going on, and consequently where the herrings are, should be so near to the fishery limits of one of the two countries, that the boats of the other country would, by observing the above mentioned Regulations, be prevented from taking part in the fishery, the said boats of the other country shall be at liberty to shoot their nets at a less distance than that prescribed in the preceding Articles for decked and undecked boats; but such fishermen as may take advantage of this permission shall be responsible for any damage or losses which their drifting may cause to the other boats.

ART. XXXIV. Fishermen of the one country shall not avail themselves of the circumstances mentioned in the preceding Article, nor of any other circumstances whatsoever, to shoot their nets within the fishery limits of the other country.

ART. XXXV. Whenever set nets are employed for the purpose of taking herrings, the boats engaged in this fishery shall always remain over their nets.

These boats shall, moreover, be bound to observe the prohibition contained in Article LVII in favor of drift-net fishing.

ART. XXXVI. Mackerel fishing is free all the year round.

ART. XXXVII. The meshes of all nets used for mackerel fishing shall not be less than one inch and one-sixth (thirty millimètres French) square, from knot to knot, along the line.

ART. XXXVIII. It is forbidden to all fishermen to load the lower parts of mackerel drift nets with leads or stones.

ART. XXXIX. Boats going to fish for mackerel with drift nets are required, when they shall arrive on the fishing ground, to lower all sails, to show that they have taken their berths.

ART. XL. The boats mentioned in the preceding article shall keep three-quarters of a mile at least apart from one another when they shoot their nets.

ART. XLI. The meshes of nets known by the name of bratt nets shall not be less than four inches and one-third (eleven centimètres French) square, from knot to knot, along the line.

ART. XLII. The meshes of the middle nets of trammels shall be at least two inches (five centimètres French) square, from knot to knot, along the line.

The meshes of both of the outer nets of trammels shall be at least six inches (fifteen centimètres French) square, from knot to knot, along the line.

ART. XLIII. Fishermen using bratt nets, trammels, and other set or anchored nets, shall place buoys on such nets, in order that vessels sailing in those places may avoid them.

ART. XLIV. Such bratt nets, trammels, or other set or anchored nets shall not, except in unavoidable cases, remain more than twenty-four hours in the sea without being taken up.

ART. XLV. Oyster fishing shall open on the first of September, and shall close on the thirtieth of April.

ART. XLVI. From the first of May to the thirty-first of August no boat shall have on board any dredge or other implement whatsoever for catching oysters.

ART. XLVII. It is forbidden to dredge for oysters between sunset and sunrise.

ART. XLVIII. The fishermen shall cull the oysters on the fishing ground, and shall immediately throw back into the sea all oysters less than two and a half inches (six centimètres French) in the greatest diameter of the shell, and also all sand, gravel, and fragments of shells.

ART. XLIX. It is forbidden to throw into the sea on oyster fishing grounds the ballast of boats, or any other thing whatsoever which might be detrimental to the oyster fishery.

ART. L. For the purpose of distinguishing by day drift-net fishing boats from trawl boats, both shall carry at the masthead vanes, which shall be at least eight inches (twenty centimètres French) in height and two feet (sixty-one centimètres) in length.

The colours of these vanes shall be, for—

British trawl boats, red.

French trawl boats, blue.

British drift boats, white and red.

French drift boats, white and blue.

It is understood that the vanes of drift boats shall be divided vertically into two equal parts, of which the white shall be nearest to the mast.

ART. LI. It is forbidden to all other fishing boats to carry vanes similar to those mentioned in the preceding Article.

ART. LII. It is forbidden to all boats to anchor between sunset and sunrise on grounds where herring or mackerel drift-net fishing is going on.

This prohibition does not apply to anchorages which may take place in consequence of accidents or any other compulsory circumstances, but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally about three feet (one mètre French) apart, and shall keep these lights up all the time the boat shall remain at anchor.

ART. LIII. In order that boats fishing with drift nets may be easily recognized at night, the masters of these boats shall hoist on one of their masts two lights, one over the other, three feet (one mètre French) apart.

These lights shall be kept up during all the time their nets shall be in the sea between sunset and sunrise.

ART. LIV. All fishermen are forbidden, except in cases of absolute necessity, to show lights under any other circumstances than those mentioned in the present Regulations.

ART. LV. The meshes of the various nets before mentioned shall be of the prescribed dimensions, measured when the net is wet.

ART. LVI. It is forbidden to use nets for any other kind of fishing than that for which each of those nets may be lawfully employed, with respect to the size of its meshes, or of its fittings.

ART. LVII. It is forbidden to set or anchor nets, or any other fishing implement, in any place where herring or mackerel drift-net fishing is going on.

ART. LVIII. No boat shall be made fast or held on to the nets, buoys, floats, or to any part of the fishing tackle belonging to another boat.

ART. LIX. It is forbidden to all persons to hook or lift up the nets, lines, or other fishing implements belonging to others, under any pretence whatsoever.

ART. LX. When nets of different boats get foul of each other, the masters of the said boats shall not cut them, except by mutual consent, unless it shall have been found impossible to clear them by other means.

ART. LXI. All fishing boats, all rigging, gear, or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever, found or picked up at sea, shall, as soon as possible, be delivered to the Collector of Customs, if the article saved be taken into England, and to the Commissary of Marine, if the article saved is taken into France.

ART. LXII. The Collector of Customs, or the Commissary of Marine, as the case may be, shall restore the articles saved to the owners thereof or to their representatives.

These functionaries may, when the circumstances are such as to call for it, award to the salvors a suitable compensation for their trouble and care. This compensation, which shall in no case exceed one-fourth of the actual value of the articles saved, shall be paid by the owners.

ART. LXIII. The execution of the regulations concerning the fittings of nets and the size of their meshes, the weight and dimensions of fishing instruments, and, in short, concerning every thing connected with the implements of fishing, is placed, with respect to the fishermen of each of the two nations, under the exclusive superintendence of the cruisers and agents of their own nation.

Nevertheless the Commanders of the cruisers of each nation shall mutually acquaint the Commanders of the other nation with any transgressions of the above-mentioned regulations, committed by the fishermen of the other nation, which may come to their knowledge.

ART. LXIV. Infractions of regulations concerning the placing of boats, the distances to be observed, the prohibition of certain fisheries by day or by night, or during certain periods of the year, and concerning every other operation connected with the act of fishing, and more particularly as to circumstances likely to cause damage, shall be taken cognizance of by the cruisers of both nations, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ART. LXV. The commanders of cruisers of both countries shall exercise their judgment as to the causes of any transgressions committed by British or French fishing boats in the seas where the said boats have the right to fish in common; and when the said Commanders shall be satisfied of the fact of the transgression, they shall detain the boats having thus infringed the established Regulations, and may take them into the port nearest to the scene of the occurrence, in order that the offense may be duly established, as well by comparing the declarations and counter declarations of parties interested, as by the testimony of those who may have witnessed the facts.

ART. LXVI. When the offence shall not be such as to require exemplary punishment, but shall, nevertheless, have caused injury to any fisherman, the Commanders of cruisers shall be at liberty, should the circumstances admit of it, to arbitrate at sea between the parties concerned, and on refusal of the offenders to defer to their arbitration, the said Commanders shall take both them and their boats into the nearest port, to be dealt with as stated in the preceding Article.

ART. LXVII. Every fishing boat which shall have been taken into a foreign port, under either of the two preceding Articles, shall be sent back to her own country for trial as soon as the transgression for which she may have been detained shall have been duly established. Neither the boat nor her crew shall, however, be detained in the foreign port more than four days.

ART. LXVIII. The depositions, minutes of proceedings, and all other documents concerning the transgression, after being authenticated by the Collector of Customs, or by the Commissary of Marine according to the country into which the boat may have been taken, shall be transmitted by that functionary to the Consular Agent of his nation residing in the port where the trial is to take place.

This Consular Agent shall communicate these documents to the Collector of Customs, if in the United Kingdom, or to the Commissary of Marine, if in France; and if, after having conferred with that functionary, it shall be necessary for the interest of his countrymen, he shall proceed with the affair before the competent tribunal or magistrates.

ART. LXIX. All transgressions of these Regulations established for the protection of Fisheries in the seas lying between the coasts of the British islands and those of France shall, in both countries, be submitted to the exclusive jurisdiction of the tribunal or the magistrates which shall be designated by law.

This tribunal, or these magistrates, shall also settle all differences, and decide all contentions, whether arising between fishermen of the same country, or between fishermen of the two countries, and which can not have been settled by the Commanders of cruisers, or by the Consular Agents and the Collectors of Customs, or Commissaries of Marine, according to the country.

The above-mentioned jurisdiction shall not, however, be understood to apply to murder, felony, or any other grave crime; all such crimes remaining subject to the ordinary laws of each country, respectively.

ART. LXX. The trial and judgment of the transgressions mentioned in the preceding Article shall always take place in a summary manner, and at as little expense as possible.

ART. LXXI. In both countries the competent tribunal or magistrates shall be empowered to adjudge the following penalties for offenses against the Regulations committed by fishermen subject to their jurisdiction:

First. Forfeiture and destruction of nets or other fishing implements which are not conformable to the Regulations.

Secondly. Fines from eight shillings (ten francs) to ten pounds sterling (two hundred and fifty francs), or imprisonment for not less than two days, and not more than one month.

ART. LXXII. The use of nets or other fishing implements of which the fittings, size of meshes, dimensions, or weight shall not be conformable to the Regulations established for each kind of Fishery shall subject the said nets or implements to seizure and destruction, and the offenders to a fine of not less than eight shillings (ten francs) nor more than three pounds sterling (seventy-five francs), or to imprisonment from two to ten days.

In cases of repetition of the offence, the fine or imprisonment may be doubled.

ART. LXXIII. All persons shall be condemned to a fine of from eight shillings to five pounds sterling (ten francs to one hundred and twenty-five francs), or to imprisonment from five to fifteen days, who either by night or by day, conjointly or separately, shall offend against the measures established by the Regulations for the preservation of peace and good order, and specifically against those concerning—

First. The letters, numbers, and names to be placed on the boats and their sails, and on nets, buoys, etc.

Secondly. The vanes to be carried by the boats.

Thirdly. The distances to be observed between the boats.

Fourthly. The placing and anchoring of boats.

Fifthly. The placing or shooting of nets, and taking them up.

Sixthly. The clearing of nets.

Seventhly. The placing of buoys upon nets.

Eighthly. Lastly, the lights to be shown.

In cases of repetition of any of these offences, the fine or imprisonment may be doubled.

ART. LXXIV. In all cases of assault committed at sea by fishermen on other fishermen, or whenever they shall have intentionally caused damages or loss, the competent tribunal or magistrates may condemn the delinquents to a term of imprisonment not exceeding twenty days, or to a fine not exceeding five pounds sterling (one hundred and twenty-five francs).

Should there have been at the same time any infringement of the Regulations, the imprisonment or fine above mentioned may be awarded over and above the penalties to which the said infringement shall have given rise.

ART. LXXV. The competent tribunal or magistrates shall, when the circumstances are such as to call for it, award, over and above all penalties inflicted for offences against the Regulations, the payment of damages to the injured parties, and shall determine the amount of such damages.

ART. LXXVI. The conditions under which the fishing boats of either of the two countries shall be at liberty to come within the fishery limits of the other country are laid down in the following Articles, which also specify and regulate the penalties to be inflicted for infraction of the said Articles.

ART. LXXVII. The competent tribunal or magistrates shall exclusively take cognizance (in the same manner as stipulated in Article LXIX) of the infractions mentioned in Article LXXVI.

ART. LXXVIII. The putting into the Chausey Islands by British oyster fishing boats is regulated by the six following Articles.

ART. LXXIX. The putting into the Chausey Islands by British fishing boats, in consequence of damage, evident bad weather, or any other compulsory circumstance, is a right confirmed by Article VII of the convention of the second of August, one thousand eight hundred and thirty-nine.

ART. LXXX. The expediency of putting in, under any of the circumstances mentioned in the preceding Article, must naturally be determined by those fishermen who may find it necessary to avail themselves of this right.

Nevertheless, whenever the British fishing boats shall be able to communicate with the Commander of the British station, they shall not put in until they are authorised so to do by the said Commander's hoisting the following signal—a blue ensign at the masthead.

ART. LXXXI. The Commander of the English station may, when he shall consider this measure necessary, authorise the weaker boats, which are consequently the most exposed to the effects of bad weather, to put into the Chausey Islands whilst the other boats shall continue to fish.

This permission shall be made known by the following signal—a red ensign at the masthead.

ART. LXXXII. When the Commander of the English station shall have authorised the whole or part of the British boats to seek shelter in the Chausey Islands, in consequence of the above-mentioned causes, he shall give notice thereof immediately afterwards to the French cruisers by means of the following signals, viz:

For the anchorage of all the boats (provided for in Article LXXX), a blue peter placed under the blue ensign at the masthead.

For the anchorage of the weaker boats (provided for in Article LXXXI), a blue peter placed under the red ensign at the masthead.

ART. LXXXIII. Whenever the appearance of the weather, although it be not actually stormy at the time, yet shall be so threatening that boats could not gain shelter of the British Channel Islands before it comes on, the British Commander, taking on himself the responsibility of the measure, may authorize the said boats to anchor at Chausey, by hoisting a blue peter.

This permission shall, at the same time, be made known to the French cruisers by means of a French flag hoisted at the masthead over the said blue peter.

These flags shall not be hauled down until the French cruisers shall have understood the signal, and answered it by hoisting, also at the masthead, an English flag.

ART. LXXXIV. When British fishing boats put into Chausey, they shall keep together in the same part of the anchorage.

Should any compulsory circumstances prevent their doing so, the Commander of the English station shall inform the French station thereof by hoisting, in addition to the flags flying to announce the putting in of the boats, a Union Jack under the said flags.

ART. LXXXV. The fishing boats of the one country shall not approach nearer to any part of the coasts of the other country than the limit of three miles, specified in Article IX of the convention signed at Paris on the second day of August, one thousand eight hundred and thirty-nine, except under the following circumstances:

First. When driven by stress of weather or by evident damage to seek shelter in the harbours, or within the fishery limits of the other country.

Secondly. When carried within the limits established for the fishery of the other country by contrary winds, by strong tides, or by any other cause independent of the will of the master and crew.

Thirdly. When obliged by contrary winds or tide to beat up in order to reach their fishing ground; and when, from the same cause of contrary wind or tide, they could not, if they remained outside, be able to hold on their course to their fishing ground.

Fourthly. When during the herring fishing season, the herring fishing boats of one country shall find it expedient to anchor under shelter of the coasts of the other country, in order to await a favourable opportunity for proceeding to their lawful fishery outside of the limits defined by Article IX of the Convention of the second of August, one thousand eight hundred and thirty-nine.

ART. LXXXVI. Whenever, in any of the cases of exception specified in the preceding Article, the fishing boats of either nation shall have occasion to sail or anchor within the limits defined by the Convention of the second of August, one thousand eight hundred and thirty-nine, the masters of such boats shall immediately hoist a blue flag, two feet high and three feet long, and shall keep this flag flying at the masthead so long as they shall remain within the said limits; consequently this flag shall not be hauled down until the boats are actually outside of those limits.

These boats, when within the aforesaid limits, are not only prohibited from fishing themselves, but are also forbidden to send their small boats to fish, even outside of the limits in question. They must all (with the exception of herring boats, which may be waiting, as they have the privilege of doing, for a favourable opportunity to proceed to their lawful fishery) return outside the said limits so soon as the causes shall have ceased which obliged them to come in under the cases of exception specified.

It is further agreed, conformably to the tenor of the present Regulations, that the fishing boats of the one country shall not use the ports of the other country for the greater convenience of their fishery operations, either in proceeding from thence to their lawful fishery in the seas common to both, or in returning thereunto after fishing; it being understood, however, that this stipulation does not in any manner impair the right of putting into port in the cases of exception specified in Article LXXXV.

ART. LXXXVII. It is forbidden to herring drift-net fishing boats to shoot their nets earlier in the day than half an hour before sunset, except in places where it is customary to carry on this drift-net fishing by daylight.

ART. LXXXVIII. Herring fishermen, being within the fishery limits of either country, shall comply with the laws and regulations of the said country respecting the prohibition of fishing on the Sabbath day.

ART. LXXXIX. The Commanders of the cruisers of each of the two countries, and all officers or other agents whatsoever appointed to superintend the fisheries, shall exercise their judgment as to the causes of any transgressions committed by the fishing boats of the other country, and when they shall be satisfied of the fact of the transgression, they shall detain or cause to be detained the boats having thus transgressed the preceding Regulations (from Article LXXVI), and shall take them or cause them to be taken into port, where, upon clear proof of the transgression being brought by the detaining party before the competent tribunal or magistrates, the said boats so transgressing may be condemned to be kept for a period not exceeding three months, or to a fine not exceeding ten pounds sterling (two hundred and fifty francs).

In testimony whereof the respective Commissioners have signed the present Regulations, and have thereto affixed their seals.

Done in London the twenty-fourth day of May in the year of our Lord one thousand eight hundred and forty-three.

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#### APPENDIX B.

##### *Convention between Her Majesty and the Emperor of the French relative to fisheries in the seas between Great Britain and France.*

ARTICLE I. British fishermen shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark, along the whole extent of the coasts of the British islands; and French fishermen shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coast of France, the only exception to this rule being that part of the coast of France which lies between Cape Carteret and Point Meinga.

The distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland.

The miles mentioned in the present Convention are geographical miles, whereof sixty make a degree of latitude.

ART. II. It is agreed that the lines drawn between the points designated by the letters A, B, C, D, E, F, G, H, I, K, on the chart annexed to the present Convention, and signed by the respective Plenipotentiaries, shall be acknowledged by the high contracting parties as defining from Point Meinga

to Cape Carteret, the limits between which and the French shore the right of fishery shall be reserved exclusively to French fishermen, and these lines are as follows, that is to say:

The first line runs from the point A, three miles from low-water mark (Point Meinga bearing south) to the point B, of which the landmarks are Agon Tower on with the clump of trees upon Mount Huchon, and the summit of Gros Mont in a line with the semaphore on Grand Isle.

The second line runs from the said point B toward Agon Tower and the clump of trees upon Mount Huchon, in the direction north sixty-four degrees east, until, at the point C, it brings the windmill of Lingreville to bear due east.

The third line runs from point C due east toward Lingreville windmill, until the Grand Huguenant is brought to bear on the Etat Rock at point D.

The fourth line runs from point D northward (keeping the Grand Huguenant in one with the Etat Rock) until it intersects at E a line whose landmarks are Agon Tower on with Coustances Cathedral.

The fifth line runs eastward from point E to point F, where the steeple of Pirou is brought to bear in a line with the Senequet Light-house.

The sixth line runs from point F due north to point G, where the steeple of Blainville is brought in a line with the Senequet Light-house.

The seventh line runs from point G in the direction of Pirou Steeple to point H, where the light-house on Cape Carteret bears north twenty-four degrees west.

The eighth line runs from point H to point I nearly abreast of Port Bail; point I having for landmarks the fort of Port Bail in a line with the steeple of Port Bail.

And finally, the ninth line runs from point I to the Three Grunes at point K, where Cape Carteret bears east ten degrees north, in a line with Barneville Steeple.

It is further agreed that all the bearings specified in the present Article are to be taken according to the true meridian, and not according to the magnetic meridian.

ART. III. The arrangements of the present Convention shall apply beyond the fishery limits of both countries, as defined by the preceding Articles, to the seas surrounding and adjoining Great Britain and Ireland, and adjoining the coasts of France between the frontiers of Belgium and Spain. The rules respecting oyster fishery shall, however, be observed only in the seas comprised within the limits hereinafter described.

ART. IV. All British and French fishing boats shall be lettered and numbered. In the United Kingdom there shall be a series of numbers for the fishing boats belonging to each collectorship of Customs and in France a series of numbers for the fishing boats belonging to each district of Maritime Registry; and to these numbers shall be prefixed a letter (or letters) to be designated by the Board of Customs in the United Kingdom and by the Ministry of Marine in France.

ART. V. The letter (or letters) and numbers shall be placed on each bow of the boat, 3 or 4 inches (8 or 10 centimètres French) below the gunwale, and they shall be painted in white oil colour on a black ground.

For boats of 15 tons burthen and upwards the dimensions of the letters and numbers shall be 18 inches (45 centimètres French) in height and  $2\frac{1}{2}$  inches (6 centimètres French) in breadth.

For boats of less than 15 tons burthen the dimensions shall be 10 inches (25 centimètres French) in height and  $1\frac{3}{4}$  inches (4 centimètres French) in breadth.

The same letter (or letters) and number shall also be painted on each side of the mainsail of the boat, in black oil colour on white sails, and in white oil colour on tanned or black sails. Such letter (or letters) and number on the sails shall be one-third larger in every way than those placed on the bows of the boat.

The name of each fishing boat and that of the port to which she belongs shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 3 inches (8 centimètres French) in height and one-half inch (12 millimètres French) in breadth.

The letters, numbers, and names placed on the boats and on their sails shall not be effaced, covered, or concealed in any manner whatsoever.

ART. VI. All the buoys, barrels, and principal floats of each net, and all other implements of fishery, shall be marked with the same letter (or letters) and number as those of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they judge proper.

ART. VII. The letters and numbers of British fishing boats shall, after having been entered in the registry book kept at the collectorship of Customs, be inserted on the licences or other official papers of those boats.

The letters and numbers of French fishing boats shall, after having been entered in the registry book kept at the Maritime Registry Office, be inserted on the muster rolls of those boats.

ART. VIII. The licences or other official papers of British fishing boats, and the muster rolls of French fishing boats, shall contain the description and tonnage of each boat, as well as the names of its owner and of its master.

ART. IX. The fishermen of both countries shall, whenever required, exhibit their licences or other official papers, or their muster rolls, to the commanders of the fishery cruisers, and to all other persons of either country appointed to superintend the fisheries.

ART. X. Fishing of all kinds, by whatever means and at all seasons, may be carried on in the seas lying beyond the fishery limits which have been fixed for the two countries, with the exception of that for oysters, as hereinafter expressed.

ART. XI. From the 16th of June to the 31st of August, inclusive, fishing for oysters is prohibited outside the fishery limits which have been fixed for the two countries, between a line drawn from the North Foreland Light to Dunkirk, and a line drawn from the Land's End to Ushant.

During the same period and in the same part of the channel, no boat shall have on board any oyster dredge, unless the same be tied up and sealed by the Customs authorities of one of the two countries in such a manner as to prevent its being made use of.

ART. XII. No boat shall anchor between sunset and sunrise on grounds where drift-net fishing is actually going on.

This prohibition shall not apply to anchorings which may take place in consequence of accidents, or any other compulsory circumstances; but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally about three feet (1 mètre French) apart, and shall keep those lights up all the time the boat shall remain at anchor.

ART. XIII. Boats fishing with drift nets shall carry on one of their masts two lights, one over the other, three feet (1 mètre French) apart.

These lights shall be kept up during all the time their nets shall be in the sea between sunset and sunrise.

ART. XIV. Subject to the exceptions or additions mentioned in the two preceding Articles, the fishing boats of the two countries shall conform to the general rules respecting lights which have been adopted by the two countries.

ART. XV. Trawl boats shall not commence fishing at a less distance than three miles from any boat fishing with drift nets.

If trawl boats have already shot their nets, they must not come nearer to boats fishing with drift nets than the distance above mentioned.

ART. XVI. No boat fishing with drift nets shall shoot its nets so near to any other boat which has already shot its nets on the fishing ground as to interfere with its operations.

ART. XVII. No decked boat fishing with drift nets shall shoot its nets at a less distance than a quarter of a mile from any undecked boat which is already engaged in fishing.

ART. XVIII. If the spot where fishing is going on should be so near to the fishery limits of one of the two countries that the boats of the other country would, by observing the regulations prescribed by Articles XV, XVI, and XVII preceding, be prevented from taking part in the fishery, such boats shall be at liberty to shoot their nets at a less distance than that so described; but in such case the fishermen shall be responsible for any damage or losses which may be caused by the drifting of their boats.

ART. XIX. Nets shall not be set or anchored in any place where drift-net fishing is actually going on.

ART. XX. No one shall make fast or hold on his boat to the nets, buoys, floats, or any part of the fishing tackle belonging to another boat.

No person shall hook or lift up the nets, lines, or other fishing implements belonging to another person.

ART. XXI. When nets of different boats get foul of each other, the master of one boat shall not cut the nets of another boat except by mutual consent, and unless it be found impossible to clear them by other means.

ART. XXII. All fishing boats, all rigging gear or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever, found or picked up at sea, shall, as soon as possible, be delivered to the Receiver of Wreck if the article saved be taken into the United Kingdom, and to the Commissary of Marine if the article saved be taken into France.

The Receiver of Wreck or the Commissary of Marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives.

These functionaries shall fix the amount which the owners shall pay to the salvors.

ART. XXIII. The execution of the regulations concerning lights and signals, licences, muster rolls, and official papers, the lettering and numbering of boats and implements of fishing, is placed, with respect to the fishermen of each of the two nations, under the exclusive superintendence of the cruisers and agents of their own nation.

Nevertheless, the commanders of the cruisers of one of the two nations shall acquaint the commanders of the cruisers of the other nation with any infractions of the above-mentioned regulations committed by the fishermen of such other nation which may come to their knowledge.

ART. XXIV. All infractions of the regulations concerning the placing of boats on the fishing ground, the distances to be observed between them, the prohibition of oyster fishing during a portion of the year, and concerning every other operation connected with the act of fishing, and more particularly concerning circumstances likely to cause damage, shall be taken cognizance of by the cruisers of either nation, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ART. XXV. The commanders of cruisers of either country shall exercise their judgment as to the causes of any infractions brought to their knowledge, or as to damage arising from any cause whatever committed by British or French fishing boats in the seas beyond the fishery limits which have been fixed for the two countries; they may detain the offending boats and take them into the port nearest the scene of the occurrence, in order that the infraction or damage may be there duly established, as well by comparing the declarations and counter declarations of the parties interested as by the testimony of those who were present.

ART. XXVI. When the offense shall not be such as to require exemplary punishment, but shall nevertheless have caused damage to any fisherman, the commanders of the cruisers shall be at liberty, should the circumstances admit of it, to arbitrate at sea between the parties concerned. On refusal of the offenders to defer to their arbitration, the said commanders shall take both them and their boats into the nearest port, to be dealt with as stated in the preceding Article.

ART. XXVII. Every fishing boat which shall have been taken into a foreign port in conformity with the two preceding Articles shall be sent back to her own country for trial as soon as the infraction for which she may have been detained shall have been duly established. Neither the boat nor her crew shall, however, be detained in the foreign port more than three clear days.

ART. XXVIII. The depositions, minutes of proceedings, and all other documents concerning the infraction, after having been authenticated by the Collector of Customs in the United Kingdom, or by the Commissary of Marine in France, shall be transmitted by that functionary to the consular agent of his nation residing in the port where the trial is to take place.

Such Consular Agent shall communicate those documents to the Collector of Customs, or to the Commissary of Marine, as the case may be; and if, after having conferred with that functionary, it shall be necessary for the interest of his countrymen, he shall proceed with the affair before the competent tribunal or magistrates of the country.

ART. XXIX. In both countries the competent court or magistrate shall be empowered to condemn to a fine of at least eight shillings (ten francs), or to imprisonment for at least two days, persons who may infringe the regulations of the convention concerning—

1. The close season for oysters, and illegal possession of dredges on board during that season.
2. The letters, numbers, and names to be placed on the boats, sails, nets, and buoys.
3. The licenses or muster rolls.
4. The flags and lights to be carried by the boats.
5. The distances to be observed by the boats between each other.
6. The placing and anchoring of vessels and boats.
7. The placing and shooting of nets and the taking them up.
8. The clearing of nets.
9. The placing of buoys upon nets.

In case of repetition of the offence the amount of fine or period of imprisonment may be doubled.

ART. XXX. In all cases of assault committed or of damage or loss inflicted at sea by fishermen of either country upon fishermen of the other country, the Courts of the country to which the offenders belong shall condemn the latter to a fine of at least eight shillings (10 francs), or to imprisonment for at least two days. They may, moreover, condemn the offenders to pay adequate compensation for the injury.

ART. XXXI. Fishing boats of either of the two countries shall be admitted to sell their fish in such ports of the other country as may be designated for that purpose, on condition that they conform to the regulations mutually agreed upon. Those regulations, together with a list of the ports, are annexed to the present Convention, but without prejudice to the opening by either country of any additional ports.

ART. XXXII. The fishing boats of the one country shall not enter within the fishery limits fixed for the other country except under the following circumstances:

1. When driven by stress of weather or by evident damage.
2. When carried in by contrary winds, by strong tides, or by any other cause beyond the control of the master and crew.
3. When obliged by contrary winds or tide to beat up in order to reach their fishing ground; and when from the same cause of contrary wind or tide they could not, if they remained outside, be able to hold on their course to their fishing ground.
4. When, during the herring fishing season, the herring boats of the one country shall find it necessary to anchor under shelter of the coasts of the other country in order to await the opportunity for proceeding to their fishing ground.
5. When proceeding to any of the ports of the other country open to them for the sale of fish in accordance with the preceding article; but in such case they shall never have oyster dredges on board.

ART. XXXIII. When fishing boats, availing themselves of the privilege specified in Article XXXI, shall have oysters on board they shall not carry any dredges or other implement for taking oysters.

ART. XXXIV. The commanders of cruisers may authorise boats belonging to their own country to cross the exclusive fishery limits of the other country whenever the weather is so threatening as to compel them to seek shelter.

ART. XXXV. Whenever, owing to any of the exceptional circumstances specified in the three preceding Articles, the fishing boats of either country shall be in the ports or within the fishery limits fixed for the other country, the masters of such boats shall immediately hoist a blue flag two feet (60 centimètres French) high, and three feet (1 mètre French) long, and shall keep that flag flying at the masthead so long as they remain in such ports or within such limits. The flag shall be hauled down as soon as the boat is outside the said limits.

Such boats must return outside the said limits as soon as the exceptional circumstances which obliged them to enter shall have ceased.

ART. XXXVI. The commanders of the cruisers of each of the two countries, and all officers or other agents appointed to superintend fisheries, shall exercise their judgment as to infractions of the regulations with regard to the fishery limits, and when they shall be satisfied of the fact of the infraction they may detain the boats of the offenders, or cause them to be detained, and may take them, or cause them to be taken, into port, where, upon clear proof of the offence, such boats may be condemned by the competent Court or magistrate to a fine not exceeding ten pounds (250 francs). In default of payment, such boats may be detained for a period not exceeding three months

In case of repetition of the offence the fine may be doubled.

ART. XXXVII. The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as speedily and as summarily as the laws in force will permit.

ART. XXXVIII. The terms "British Islands" and "United Kingdom," employed in this Convention, shall include the islands of Jersey, Guernsey, Alderney, Sark, and Man, with their dependencies.

ART. XXXIX. Her Britannic Majesty engages to recommend to Parliament to pass an Act to enable her to carry into execution such of the arrangements contained in the present Convention as require legislative sanction. When such an Act shall have been passed, the Convention shall come into operation from and after a day to be then fixed upon by the two High Contracting Parties. Due notice shall be given in each country by the Government of that country of the day which may be so fixed upon.

ART. XL. The Convention shall continue in force for ten years from the day on which it may come into operation, and if neither party shall, twelve months before the expiration of the said period of ten years, give notice of its intention to terminate its operation, the Convention shall continue in force one year longer, and so on from year to year, until the expiration of one year's notice from either party for its termination.

The High Contracting Parties, however, reserve to themselves the power to make, by mutual consent, any modification in the convention which experience shall have shown to be desirable, provided it is not inconsistent with the principles on which it is based.

ART. XLI. The Convention concluded between the High Contracting Parties on the 2d of August, 1839, and the Regulations of the 23d of June, 1843, shall continue in force until the day when, as provided in Article XXXIX, the present Convention shall come into operation, and shall then altogether cease and determine.

ART. XLII. The present Convention shall be ratified, and the ratifications shall be exchanged as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November, in the year of our Lord 1867.

ADDITIONAL ARTICLE. It is agreed that Article XXXI of the convention signed this day shall not come into operation until the two Contracting Parties shall have come to a further understanding on the subject. Due notice shall be given of the day that may be fixed upon for its coming into operation.

The present Additional Article shall have the same force and validity as if it were inserted, word for word, in the Convention signed this day. It shall be ratified and the ratifications shall be exchanged at the same time as those of the convention.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November, in the year of our Lord 1867.

#### APPENDIX C.

*International Convention (of 1882 between Belgium, Denmark, France, Germany, Great Britain, and the Netherlands) for the purpose of regulating the Police of the fisheries in the North Sea outside Territorial Waters.*

ARTICLE I. The provisions of the present Convention, the object of which is to regulate the police of the fisheries in the North Sea outside territorial waters, shall apply to the subjects of the High Contracting Parties.

ART. II. The fishermen of each country shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependant islands and banks.

As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed ten miles.

The present Article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the Powers to whom the shore belongs.

ART. III. The miles mentioned in the preceding Article are geographical miles, whereof sixty make a degree of latitude.

ART. IV. For the purpose of applying the provisions of the present Convention, the limits of the North Sea shall be fixed as follows:

1. On the north by the parallel of the 61st degree of latitude.

2. On the east and south:

(1) By the coasts of Norway between the parallel of the 61st degree of latitude and Lindesnaes Light-house (Norway).

(2) By a straight line drawn from Lindesnaes Light-house (Norway) to Hanstholm Light-house (Denmark).

(3) By the coasts of Denmark, Germany, the Netherlands, Belgium, and France, as far as Gris Nez Light-house.

## 3. On the west:

(1) By a straight line drawn from Gris Nez Light-house (France) to the easternmost light-house at South Foreland (England).

(2) By the eastern coasts of England and Scotland.

(3) By a straight line joining Duncansby Head (Scotland) and the southern point of South Ronaldsha (Orkney Islands).

(4) By the eastern coasts of the Orkney Islands.

(5) By a straight line joining North Ronaldsha Light-house (Orkney Islands) and Sumburgh Head Light-house (Shetland Islands).

(6) By the eastern coasts of the Shetland Islands.

(7) By the meridian of North Unst Light-house (Shetland Islands) as far as the parallel of the 61st degree of latitude.

ART. V. The fishing boats of the high contracting parties shall be registered in accordance with the administrative regulations of each country. For each port there shall be a consecutive series of numbers, preceded by one or more initial letters, which shall be specified by the superior competent authority.

Each Government shall draw up a list showing these initial letters.

This list, together with all modifications which may subsequently be made in it, shall be notified to the other contracting powers.

ART. VI. Fishing boats shall bear the initial letter or letters of the port to which they belong, and the registry number in the series of numbers for that port.

ART. VII. The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least eight centimètres in height and twelve millimètres in breadth.

ART. VIII. The letter or letters and numbers shall be placed on each bow of the boat, eight or ten centimètres below the gunwale, and so as to be clearly visible. They shall be painted in white oil colour on a black ground.

The distance above mentioned shall not, however, be obligatory for boats of small burden, which may not have sufficient space below the gunwale.

For boats of fifteen tons burden and upward the dimensions of the letters and numbers shall be forty-five centimètres in height and six centimètres in breadth.

For boats of less than fifteen tons burden the dimensions shall be twenty-five centimètres in height and four centimètres in breadth.

The same letter or letters and numbers shall also be painted on each side of the mainsail of the boat, immediately above the close reef, in black oil color on white or tanned sails, and in white oil color on black sails.

The letter or letters and numbers on the sails shall be one-third larger in every way than those placed on the bows of the boat.

ART. IX. Fishing boats may not have, either on their outside or on their sails, any names, letters, or numbers other than those prescribed by Articles VI, VII, and VIII of the present convention.

ART. X. The names, letters, and numbers placed on the boats and on their sails shall not be effaced, altered, made illegible, covered, or concealed in any manner whatsoever.

ART. XI. All the small boats, buoys, principal floats, trawls, grapnels, anchors, and generally all fishing implements, shall be marked with the letter or letters and numbers of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they think proper.

ART. XII. The master of each boat must have with him an official document, issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of his boat.

This document must always give the letter or letters and number of the boat, as well as her description and the name or names of the owner or the name of the firm or association to which she belongs.

ART. XIII. The nationality of a boat must not be concealed in any manner whatsoever.

ART. XIV. No fishing boat shall anchor, between sunset and sunrise, on grounds where drift-net fishing is actually going on.

This prohibition shall not, however, apply to anchorings which may take place in consequence of accidents or of any other compulsory circumstances.

ART. XV. Boats arriving on the fishing grounds shall not either place themselves or shoot their nets in such a way as to injure each other, or as to interfere with fishermen who have already commenced their operations.

ART. XVI. Whenever, with a view of drift-net fishing, decked boats and undecked boats commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats.

The decked boats, on their part, shall shoot their nets to leeward of the undecked boats.

As a rule, if decked boats shoot their nets to windward of undecked boats which have begun fishing, or if undecked boats shoot their nets to leeward of decked boats which have begun fishing, the responsibility as regards any damages to nets which may result shall rest with the boats which last began fishing, unless they can prove that they were under stress of compulsory circumstances, or that the damage was not caused by their fault.

ART. XVII. No net or any other fishing engine shall be set or anchored on grounds where drift-net fishing is actually going on.

ART. XVIII. No fisherman shall make fast or hold on his boat to the nets, buoys, floats, or any other part of the fishing tackle of another fisherman.

ART. XIX. When trawl fishermen are in sight of drift-net or of long-line fishermen, they shall take all necessary steps in order to avoid doing injury to the latter. Where damage is caused, the responsibility shall lie on the trawlers, unless they can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault.

ART. XX. When nets belonging to different fishermen get foul of each other, they shall not be cut without the consent of both parties.

All responsibility shall cease if the impossibility of disengaging the nets by any other means is proved.

ART. XXI. When a boat fishing with long lines entangles her lines in those of another boat, the person who hauls up the lines shall not cut them except under stress of compulsory circumstances, in which case any line which may be cut shall be immediately joined together again.

ART. XXII. Except in cases of salvage and the cases to which the two preceding articles relate, no fisherman shall, under any pretext whatever, cut, hook, or lift up nets, lines, or other gear not belonging to him.

ART. XXIII. The use of any instrument or engine which serves only to cut or destroy nets is forbidden.

The presence of any such engine on board a boat is also forbidden.

The high contracting parties engage to take the necessary measures for preventing the embarkation of such engines on board fishing boats.

ART. XXIV. Fishing boats shall conform to the general rules respecting lights which have been, or may be, adopted by mutual arrangement between the high contracting parties with the view of preventing collisions at sea.

ART. XXV. All fishing boats, all their small boats, all rigging gear or other appurtenances of fishing boats, all nets, lines, buoys, floats, or other fishing implements whatsoever found or picked up at sea, whether marked or unmarked, shall as soon as possible be delivered to the competent authority of the first port to which the salving boat returns or puts in.

Such authority shall inform the consul or consular agent of the country to which the boat of the salvor belongs, and of the nation of the owner of the articles found. They [the same authority] shall restore the articles to the owners thereof or to their representatives, as soon as such articles are claimed and the interests of the salvors have been properly guaranteed.

The administrative or judicial authorities, according as the laws of the different countries may provide, shall fix the amount which the owners shall pay to the salvors.

It is, however, agreed that this provision shall not in any way prejudice such conventions respecting this matter as are already in force, and that the high contracting parties reserve the right of regulating, by special arrangements between themselves, the amount of salvage at a fixed rate per net salvaged.

Fishing implements of any kind found unmarked shall be treated as wreck.

ART. XXVI. The superintendence of the fisheries shall be exercised by vessels belonging to the national navies of the high contracting parties. In the case of Belgium, such vessels may be vessels belonging to the State, commanded by captains who hold commissions.

ART. XXVII. The execution of the regulations respecting the document establishing nationality, the marking and numbering of boats, etc., and of fishing implements, as well as the presence on board of instruments which are forbidden (Articles VI, VII, VIII, IX, X, XI, XII, XIII, and XXIII, sec. 2), is placed under the exclusive superintendence of the cruisers of the nation of each fishing boat.

Nevertheless, the commanders of cruisers shall acquaint each other with any infractions of the above-mentioned regulations committed by the fishermen of another nation.

ART. XXVIII. The cruisers of all the high contracting parties shall be competent to authenticate all infractions of the regulations prescribed by the present Convention, other than those referred to in Article XXVII, and all offences relating to fishing operations, whichever may be the nation to which the fisherman guilty of such infractions may belong.

ART. XXIX. When the commanders of cruisers have reason to believe that an infraction of the provisions of the present convention has been committed, they may require the master of the boat inculpated to exhibit the official document establishing her nationality. The fact of such document having been exhibited shall then be indorsed upon it immediately.

The commanders of cruisers shall not pursue further their visit or search on board a fishing boat which is not of their own nationality, unless it should be necessary for the purpose of obtaining proof of an offence or of a contravention of regulations respecting the police of the fisheries.

ART. XXX. The commanders of the cruisers of the signatory powers shall exercise their judgment as to the gravity of facts brought to their knowledge, and of which they are empowered to take cognizance, and shall verify the damage, from whatever cause arising, which may be sustained by fishing boats of the nationalities of the high contracting parties.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts as elicited both from the declarations of the parties interested and from the testimony of those present.

The commander of the cruiser may, if the case appears to him sufficiently serious to justify the step, take the offending boat into a port of the nation to which the fisherman belongs. He may even take on board the cruiser a part of the crew of the fishing boat in order to hand them over to the authorities of her nation.

ART. XXXI. The formal statement referred to in the preceding Article shall be drawn up in the language of the commander of the cruiser, and according to the forms in use in his country.

The accused and the witnesses shall be entitled to add, or to have added, to such statement, in their own language, any observations or evidence which they may think suitable. Such declarations must be duly signed.

ART. XXXII. Resistance to the directions of commanders of cruisers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruiser, be considered as resistance to the authority of the nation of the fishing boat.

ART. XXXIII. When the act alleged is not of a serious character, but has nevertheless caused damage to any fisherman, the commanders of cruisers shall be at liberty, should the parties concerned agree to it, to arbitrate at sea between them, and to fix the compensation to be paid.

Where one of the parties is not in a position to settle the matter at once, the commanders shall cause the parties concerned to sign in duplicate a formal document specifying the compensation to be paid.

One copy of this document shall remain on board the cruiser and the other shall be handed to the master of the boat to which the compensation is due, in order that he may, if necessary, be able to make use of it before the courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the commanders shall act in accordance with the provisions of Article XXX.

ART. XXXIV. The prosecutions for offences against, or contraventions of, the present convention shall be instituted by, or in the name of, the State.

ART. XXXV. The high contracting parties engage to propose to their respective Legislatures the necessary measures for ensuring the execution of the present Convention, and particularly for the punishment by either fine or imprisonment, or by both, of persons who may contravene the provisions of Articles VI to XXIII inclusive.

ART. XXXVI. In all cases of assault committed, or of willful damage or loss inflicted, by fishermen of one of the contracting countries upon fishermen of another nationality, the courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rule shall apply with regard to offences against, and contraventions of, the present Convention.

ART. XXXVII. The proceedings and trial in cases of infraction of the provisions of the present convention shall take place as summarily as the laws and regulations in force will permit.

ART. XXXVIII. The present Convention shall be ratified. The ratifications shall be exchanged at The Hague as soon as possible.

ART. XXXIX. The present Convention shall be brought into force from and after a day to be agreed upon by the high contracting parties.

The Convention shall continue in operation for five years from the above day; and unless one of the high contracting parties shall, twelve months before the expiration of the said period of five years, give notice of intention to terminate its operation, shall continue in force one year longer, and so on from year to year. If, however, one of the Signatory Powers should give notice to terminate the convention, the same shall be maintained between the other contracting parties, unless they give a similar notice.

ADDITIONAL ARTICLE. The Government of His Majesty the King of Sweden and Norway may adhere to the present Convention, for Sweden and for Norway, either jointly or separately.

This adhesion shall be notified to the Netherlands Government, and by it to the other Signatory Powers.

In witness whereof the Plenipotentiaries have signed the present convention and have affixed thereto their seals.

Done at The Hague, in six copies, the 6th of May, 1882.

#### APPENDIX D.

##### *Anglo-Belgian Declaration respecting the North Sea Fisheries.*

ARTICLE I. Whenever a complaint involving a claim for damages shall be preferred by a fisherman of one of the two countries against a fisherman of the other country, it shall be referred for preliminary inquiry—in Belgium, to a Commission composed of at least two officers appointed by the Minister of Railways, Posts, and Telegraphs; in the United Kingdom, to a Commission also composed of at least two officers appointed by the Board of Trade; these officers shall hold their inquiry at the place where the allegations of the complainants can most easily be verified.

ART. II. No complaint shall be transmitted either to the British or to the Belgian Government, as the case may be, unless:

1. The commission has recognised it as well founded.
2. Such fishermen as are specified by the commission engage themselves to appear in person in case they should be summoned to give evidence.

ART. III. The complaints must be accompanied by—

1. A Report from the Commission of Inquiry.
2. A certificate from this Commission, verifying the ownership of the lost or injured fishing gear.
3. A certificate of an expert nominated (as the case may be), in the United Kingdom by the Board of Trade, in Belgium by the Minister of Railways, Posts, and Telegraphs, and giving an estimate of the damages in money value.

These certificates must be forwarded through the proper diplomatic channel, and shall be received as evidence unless the contrary is proved.

ART. IV. When a fisherman fouls or otherwise interferes with the fishing gear of another fisherman he shall take all necessary measures for reducing to a minimum the injuries which may result to the gear or to the boat of the other fisherman.

ART. V. In the Kingdom of Belgium the Tribunal which has cognizance of an infraction of the North Sea Fisheries Convention of the 6th May, 1882, or of Article 4 of the present Declaration, shall be empowered to award damages for injury to person or property at the request of the injured party and at the suit of the Official Prosecutor.

The execution of awards of damages shall be effected, on the application of the Official Prosecutor by the competent Administration, which will advance the costs and recover them from the condemned parties according to the usual process of law in such cases.

In the United Kingdom the Court before which proceedings are taken for the above-mentioned infractions shall be empowered, at the suit of the Official Prosecutor on the request of the injured party, to award damages for injury to person or property, and the Official Prosecutor shall, at his own cost, recover the sum so awarded, or so much thereof as is possible, from the parties liable.

The amount of damages recovered, as stipulated above, shall be remitted free of cost to the injured party through the proper diplomatic channel.

ART. VI. The High Contracting Parties engage to take, or to propose to their respective legislatures, the necessary measures for insuring the execution of the present Declaration, and especially for punishing, either by fine or imprisonment, or both, persons who may contravene Article IV.

ART. VII. The present Declaration shall be ratified, and the ratifications shall be exchanged at Brussels as soon as possible.

ART. VIII. The present Declaration shall come into force at a date to be agreed upon subsequently by the High Contracting Parties.

It shall remain in force for three years from that date, and in the event of neither of the High Contracting Parties having notified twelve months before the expiry of the said period of three years their intention of terminating it, it shall continue to remain in force for a year, and so on from year to year.

In witness whereof the undersigned Envoy Extraordinary and Minister Plenipotentiary at Brussels of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the undersigned Minister for Foreign Affairs of His Majesty the King of the Belgians, have drawn up the present Declaration in duplicate, and have affixed thereto the seals of their arms.

Done at Brussels, the 2d May, 1891.

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#### APPENDIX E.

##### *Fishery Articles of the Submarine Cable Convention of 1884.*

ARTICLE I. The present Convention shall be applicable, outside of the territorial waters, to all legally established submarine cables landed in the territories, colonies, or possessions of one or more of the High Contracting Parties.

ART. II. The breaking or injury of a submarine cable, done willfully or through culpable negligence, and resulting in the total or partial interruption or embarrassment of telegraphic communication, shall be a punishable offense, but the punishment inflicted shall be no bar to a civil action for damages. This provision shall not apply to ruptures or injuries when the parties guilty thereof have become so simply with the legitimate object of saving their lives or their vessels, after having taken all necessary precautions to avoid such ruptures or injuries.

ART. V. Vessels engaged in laying or repairing submarine cables must observe the rules concerning signals that have been or shall be adopted, by common consent, by the High Contracting Parties, with a view to preventing collisions at sea. When a vessel engaged in repairing a cable carries the said signals, other vessels that see or are able to see those signals shall withdraw or keep at a distance of at least one nautical mile from such vessel, in order not to interfere with its operations. Fishing gear and nets shall be kept at the same distance. Nevertheless, a period of twenty-four hours at most shall be allowed to fishing vessels that perceive or are able to perceive a telegraph ship carrying the said signals, in order that they may be enabled to obey the notice thus given, and no obstacle shall be placed in the way of their operations during such period. The operations of telegraph ships shall be finished as speedily as possible.

ART. VI. Vessels that see or are able to see buoys designed to show the position of cables when the latter are being laid, are out of order, or are broken, shall keep at the distance of one-quarter of a nautical mile at least from such buoys. Fishing nets and gear shall be kept at the same distance.

ART. VII. Owners of ships or vessels who can prove that they have sacrificed an anchor, a net, or any other implement used in fishing, in order to avoid injuring a submarine cable, shall be indemnified by the owner of the cable. In order to be entitled to such indemnity, one must prepare, whenever possible, immediately after the accident, in proof thereof, a statement supported by the testimony of the men belonging to the crew; and the captain of the vessel must, within twenty-four hours after at the first port of temporary entry, make his declaration to the competent authorities. The latter shall give notice thereof to the consular authorities of the nation to which the owner of the cable belongs.

APPENDIX F.

*Convention between the United Kingdom and Denmark for regulating the Fisheries outside Territorial Waters in the Ocean surrounding the Farøe Islands and Iceland.*

ARTICLE I. The provisions of the present Convention, the object of which is to regulate the police of the fisheries in the ocean surrounding the Farøe Islands and Iceland outside the territorial waters of these islands, shall apply to the subjects of the High Contracting Parties.

ART. II. The subjects of His Majesty the King of Denmark shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coasts of the said islands, as well as of the dependent islets, rocks, and banks.

As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed ten miles.

The present article shall not prejudice the freedom of navigation or anchorage in territorial waters accorded to fishing boats, provided they conform to the Danish Police Regulations ruling this matter, amongst others the one stipulating that trawling vessels, while sojourning in territorial waters, shall have their trawling gear stowed away inboard.

ART. III. The miles mentioned in the preceding Article are geographical miles, whereof sixty make a degree of latitude.

ART. IV. The geographical limits for the application of the present Convention shall be fixed as follows:

On the south by a line commencing from where the meridian of North Unst Light-house (Shetland Islands) meets the parallel of 61st degree of north latitude to a point where the 9th meridian of west longitude meets the parallel of 60° north latitude, and from thence westward along that parallel to the meridian of 27° west longitude.

On the west by the meridian of 27° west longitude.

On the north by the parallel of 67° 30' of north latitude.

On the east by the meridian of the North Unst Light-house.

The aforesaid limits are shown on the chart appended to the present Convention.

ART. V. The fishing boats of the High Contracting Parties shall be registered in accordance with the administrative Regulations in force in their respective countries.

For each port there shall be a consecutive series of numbers, preceded by one or two initial letters, which shall be specified by the superior competent authority.

Each Government shall draw up a list showing these initial letters.

This list, together with all modifications which may subsequently be made in it, shall be notified to the other Government.

ART. VI. Fishing boats shall bear the initial letter or letters of the port to which they belong, and the registry number in the series of numbers for that port.

ART. VII. The name of each fishing boat and that of the port to which she belongs shall be painted in white oil colour on a black ground on the stern of the boat in letters which shall be at least eight centimètres in height and twelve millimètres in breadth.

ART. VIII. The letter or letters and numbers which shall have been assigned to a vessel on its registration shall be painted in white oil colour on a black ground, and so as to be clearly visible on each bow of the vessel, eight or ten centimètres below the gunwale, provided the space admit it. The letters and numbers of vessels of fifteen tons burden (gross tonnage) and upwards shall be forty-five centimètres in height and six centimètres in breadth.

For boats of less than fifteen tons burden (gross tonnage) the dimensions shall, if possible, be twenty-five centimètres in height and four centimètres in breadth.

The same letters and numbers shall also be painted in oil colour on each side of the mainsail of the boat immediately above the close reef, and in such a manner as to be plainly visible; they shall be painted on white sails in black, or black sails in white, and on sails of an intermediate shade in black or in white, as may be decided by the authority superintending the marking, in accordance with Article V of the present Convention.

Steam fishing vessels shall, in addition, bear the above marks on the funnel in a plainly visible manner. These marks should be of the same dimensions as those on the bow.

The letter or letters and numbers on the sails shall be one-third larger in every way than those placed on the bows of the boat.

ART. IX. Fishing boats may not have, either on their outside, on their sails, or on their funnels, any names, letters, or numbers other than those prescribed by Articles VI, VII, and VIII of the present Convention.

ART. X. The names, letters, and numbers placed on the boats and on their sails and funnels shall not be effaced, altered, made illegible, covered or concealed in any manner whatsoever.

ART. XI. All the small boats, buoys, principal floats, trawls, grapnels, anchors, and generally all fishing implements shall be marked with the letter or letters and numbers of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they think proper.

ART. XII. The master of each boat must have with him an official document, issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of the boat

This document must always give the letter or letters and number of the boat, as well as her description and the name or names of the owner or the name of the firm or association to which she belongs.

ART. XIII. The nationality of a boat must not be concealed in any manner whatsoever.

ART. XIV. No fishing boat shall anchor, between sunset and sunrise, on grounds where drift-net fishing is actually going on.

This prohibition shall not, however, apply to anchorings which may take place in consequence of accidents or of any other compulsory circumstances.

ART. XV. Boats arriving on the fishing grounds shall not either place themselves or shoot their nets in such a way as to injure each other, or as to interfere with fishermen who have already commenced their operations.

ART. XVI. Whenever, with a view of drift-net fishing, decked boats and undecked boats commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats.

The decked boats, on their part, shall shoot their nets to leeward of the undecked boats.

As a rule, if decked boats shoot their nets to windward of undecked boats which have begun fishing, or if undecked boats shoot their nets to leeward of decked boats which have begun fishing, the responsibility as regards any damages to nets which may result shall rest with the boats which last began fishing, unless they can prove that they were under stress of compulsory circumstances or that the damage was not caused by their fault.

ART. XVII. No net or any other fishing engine shall be set or anchored on grounds where drift-net fishing is actually going on.

ART. XVIII. No fisherman shall make fast or hold on his boat to the nets, buoys, floats, or any other parts of the fishing tackle of another fisherman.

ART. XIX. When trawl fishermen are in sight of net or of long-line fishermen, they shall take all necessary steps in order to avoid doing injury to the latter. Where damage is caused the responsibility shall be on the trawlers, unless they can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault.

ART. XX. When nets belonging to different fishermen get foul of each other, they shall not be cut without the consent of both parties.

All responsibility shall cease if the impossibility of disengaging the nets by any other means is proved.

ART. XXI. When a boat fishing with long lines entangles her lines in those of another boat, the person who hauls up the lines shall not cut them, except under stress of compulsory circumstances, in which case any line which may be cut shall be immediately joined together again.

ART. XXII. Except in case of salvage and the cases to which the two preceding Articles relate, no fisherman shall, under any pretext whatever, cut, hook, or lift up nets, lines, or other gear not belonging to him.

When a fisherman fouls or otherwise interferes with the fishing gear of another fisherman, he shall take all necessary measures for reducing to a minimum the injuries which may result to the gear or to the boat of the other fisherman.

ART. XXIII. The use of any instrument or engine which serves only to cut or destroy nets is forbidden.

The presence of any such engine on board a boat is also forbidden.

The High Contracting Parties engage to take the necessary measures for preventing the embarkation of such engines on board fishing boats.

ART. XXIV. Fishing boats shall conform to the general rules respecting lights and sound signals, as well as those concerning steering and navigation, which have been, or may be, adopted in respect of these boats by mutual arrangement between the High Contracting Parties with the view of preventing collisions at sea.

ART. XXV. All fishing boats, all their small boats, all rigging gear, or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever found or picked up at sea, whether marked or unmarked, shall as soon as possible be delivered to the competent authority of the first port to which the salvaging boat returns or puts in.

Such authority shall inform the Consul or Consular Agent of the country to which the boat of the salvor belongs, and the nation of the owners of the articles found. They (the same authority) shall restore the articles to the owners thereof, or to their representatives, as soon as such articles are claimed and the interests of the salvors have been properly guaranteed.

The administrative or judicial authorities, according as the laws of the respective countries may provide, shall fix the amount which the owner shall pay to the salvors. It is, however, agreed that this provision shall not in any way prejudice such Conventions respecting this matter as are already in force, and that the High Contracting Parties reserve the right of regulating, by special arrangements between themselves, the amount of salvage at a fixed rate per net salvaged.

Fishing implements of any kind found unmarked shall be treated as wreck.

ART. XXVI. The superintendence of the fisheries shall be exercised by vessels belonging to the national navies of the High Contracting Parties. In the case of Denmark such vessels may be vessels belonging to the state, commanded by Captains who hold commissions.

ART. XXVII. The execution of the Regulations respecting the documents establishing nationality, the marking and numbering of boats, etc., and of fishing implements, as well as the presence on board of instruments which are forbidden (Articles VI, VII, VIII, IX, X, XI, XII, XIII, and XXIII, paragraph 2), is placed under the exclusive superintendence of the cruisers of the nation of each fishing boat. Nevertheless, the Commanders of cruisers shall acquaint each other with any infractions of the above-mentioned Regulations committed by the fishermen of the other nation.

ART. XXVIII. The cruisers of the High Contracting Parties shall be competent to authenticate all infractions of the Regulations prescribed by the present Convention other than those referred to in Article XXVII, and all offences relating to fishing operations, whichever may be the nation to which the fishermen guilty of such infraction may belong.

ART. XXIX. When the Commanders of cruisers have reason to believe that an infraction of the provisions of the present Convention has been committed, they may require the master of the boat incriminated to exhibit the official document establishing her nationality. The fact of such document having been exhibited shall then be indorsed upon it immediately. The Commanders of cruisers shall not pursue further their visit or search on board a fishing boat which is not of their own nationality, unless it should be for the purpose of obtaining proof of an offence or of a contravention of Regulations respecting the police of the fisheries.

ART. XXX. The Commanders of the cruisers of the High Contracting Parties shall exercise their judgment as to the gravity of facts brought to their knowledge, and of which they are empowered to take cognizance, and shall verify the damage, from whatever cause arising, which may be sustained by fishing boats of the nationalities of the High Contracting Parties.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts, as elicited both from the declaration of the parties interested and from the testimony of those present

The Commander of the cruiser may, if the case appears to him sufficiently serious to justify the step, take the offending boat into a port of the nation to which the fisherman belongs.

He may even take on board the cruiser a part of the crew of the fishing boat, in order to hand them over to the authorities of her nation.

ART. XXXI. The formal statement referred to in the preceding Article shall be drawn up in the language of the Commander of the cruiser, and according to the forms in use in his country. The accused and the witnesses shall be entitled to add, or to have added to such statement, in their own language, any observations or evidence which they may think suitable. Such declarations must be duly signed.

ART. XXXII. Resistance to the direction of Commanders of cruisers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruiser, be considered as resistance to the authority of the nation of the fishing boat.

ART. XXXIII. When the act alleged is not of a serious character, but has, nevertheless, caused damage to any fisherman, the Commanders of cruisers shall be at liberty, should the parties concerned agree to it, to arbitrate at sea between them, and to fix the compensation to be paid. Where one of the parties is not in a position to settle the matter at once, the Commanders shall cause the parties concerned to sign in duplicate a formal document specifying the compensation to be paid.

One copy of this document shall remain on board the cruiser and the other shall be handed to the master of the boat to which the compensation is due, in order that he may, if necessary, be able to make use of it before the Courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the Commanders shall act in accordance with the provisions of Article XXX.

ART. XXXIV. The prosecution for offences against or contraventions of the present Convention shall be instituted by, or in the name of, the State.

ART. XXXV. The High Contracting Parties engage to propose to their respective Legislatures any measures which may be necessary for insuring the execution of the present Convention, and particularly for the punishment by either fine or imprisonment, or by both, of persons who may contravene the provisions of Articles VI to XXIII, inclusive.

ART. XXXVI. In all cases of assault committed, or of willful damage or loss inflicted, by fishermen of one of the contracting countries upon fishermen of the other nationality, the Courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rule shall apply with regard to offences against and contraventions of the present Convention.

ART. XXXVII. The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as summarily as the Laws and Regulations in force will permit.

ART. XXXVIII. The present Convention shall be ratified. The ratifications shall be exchanged in London as soon as possible.

ART. XXXIX. The present Convention shall come into operation from and after a day to be fixed upon by the two High Contracting Parties after it shall have been notified by the Danish Government that measures have been passed in respect of the Farøe Islands and Iceland, by which freedom of navigation and anchorage within the territorial waters of the said islands is accorded to British fishermen (vide Article II, paragraph 3). The Convention shall continue in force until the expiration of two years from notice by either party for its termination.

The High Contracting Parties, however, reserve to themselves the power to make, by mutual consent, any modification in the Convention which experience shall have shown to be desirable, provided it is not inconsistent with the principles upon which the Convention is based.

ADDITIONAL ARTICLE. Any other Government, the subjects of which carry on fishery in the ocean surrounding the Farøe Islands and Iceland, may adhere to the present Convention. The adhesion shall be notified to one of the Governments at Copenhagen or at London, respectively. Such notification shall be communicated to the other signatory Power.

In witness whereof the Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done at London, in two copies, June 24, 1901.

## APPENDIX G.

*Award of the Paris Tribunal of Arbitration of 1893 with respect to Concurrent Regulations for the Protection of the Fur Seals outside the limits of exclusive jurisdiction.*

ARTICLE 1. The Governments of the United States and of Great Britain shall forbid their citizens and subjects respectively to kill, capture, or pursue at any time and in any manner whatever, the animals commonly called fur seals, within a zone of sixty miles around the Pribilof Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles, of sixty to a degree of latitude.

ART. 2. The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue, in any manner whatever, during the season extending, each year, from the 1st of May to the 31st of July, both inclusive, the fur seals on the high sea, in the part of the Pacific Ocean, inclusive of the Behring Sea, which is situated to the North of the 35th degree of North latitude, and eastward of the 180th degree of longitude from Greenwich till it strikes the water boundary described in Article 1 of the Treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

ART. 3. During the period of time and in the waters in which the fur-seal fishing is allowed, only sailing vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

ART. 4. Each sailing vessel authorised to fish for fur seals must be provided with a special license issued for that purpose by its Government and shall be required to carry a distinguishing flag to be prescribed by its Government.

ART. 5. The masters of the vessels engaged in fur-seal fishing shall enter accurately in their official log book the date and place of each fur-seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

ART. 6. The use of nets, firearms, and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shotguns when such fishing takes place outside of Behring's Sea, during the season when it may be lawfully carried on.

ART. 7. The two Governments shall take measures to control the fitness of the men authorized to engage in fur-seal fishing; these men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

ART. 8. The regulations contained in the preceding articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars, or sails and manned by not more than five persons each in the way hitherto practised by the Indians, provided such Indians are not in the employment of other persons and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur seals outside of territorial waters under contract for the delivery of the skins to any person.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur sealing vessels as heretofore.

ART. 9. The concurrent regulations hereby determined with a view to the protection and preservation of the fur seals, shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.

The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether, in the light of past experience, there is occasion for any modification thereof.

## APPENDIX H.

*Konvention angående fiskeriförhållandena i de till Sverige och Danmark gränsande farvattnen; afslutad i Stockholm den 14 Juli 1899 och ratificerad i Marstrand den 4 Augusti samt i Köpenhamn den 21 Juli s. å.; ratifikationerna utväxlade i Stockholm den 10 November 1899.*

Art. I. I de till konungarikena Sverige och Danmark gränsande farvattnen skall, med de i Art. II nämnda undantag, det område, hvarest fisket är uteslutande förbehållet hvarterdera landets egna undersåtar, anses utåt hafvet sträcka sig en geografisk mil ( $\frac{1}{15}$  breddgrad) från kusten eller ytterst derutanför liggande holmar och skär, som icke ständigt af vattnet öfversköljas.

Med sagda farvatten förstås i denna öfverenskommelse:

*Kattegat*, begränsadt mot norr af räta linier, dragna från Skagens nordligaste udde till Vinga fyr och vidare derifrån till närmaste kusten af Hisingen samt mot söder af räta linier, dragna från Hasenöre till Gniben och från Kullen till Gilbjerghoved;

*Öresund*, räknadt från Kullen-Gilbjerghoved i norr till Falsterbo-Stevens i söder;

samt af *Östersjön*: farvattnen längs svenska kusten från Falsterbo till Simbrishamn äfvensom kring Bornholm och Kristiansö.

Dock skall det vara medgifvet att drifva fiske: för svenska fiskare vid ön Anholt på ett afstånd af intill  $\frac{3}{4}$  geografisk mil från kusterna af denna ö, och för danska fiskare på enahanda afstånd utanför en rät linie, dragen från Hallands Väderös fyr till Tylö fyr.

Art. II. I Öresund skall fiske allestädes vara tillåtet för båda ländernas undersåtar utan åtskillnad, dock med den inskränkning att vid stränderna å ömse sidor sundet innanför ett djup af sju meter det andra landets undersåtar icke må drifva annat fiske än sillfiske med garn. Likaledes skall vid Bornholms och Kristiansös kuster samt vid svenska kusten från Falsterbo till Simbrishamn sillfisket med drifgarn vara gemensamt för båda ländernas undersåtar från den 1 Maj till den 31 Augusti.

Strand- och fiskerättsegare förbehållas de särskilda rättigheter, som dem jemlikt hvarterdera landets lagar och författningar kunna tillkomma.

Art. III. Det skall vara båda ländernas fiskare tillåtet att, utan intrång i enskild rätt och under iakttagande af gällande tullföreskrifter samt andra

*Convention regarding fishery relations in the navigable waters bordering on Sweden and Denmark. Concluded at Stockholm on July 14, 1899, and ratified at Marstrand on August 4 and at Copenhagen on July 21 of the same year; ratifications exchanged at Stockholm on November 10, 1899.*

Art. I. In the navigable waters bordering on the Kingdoms of Sweden and Denmark the region in which fishing is exclusively reserved to the subjects of each respective country shall, with the exceptions mentioned in Article II, be considered to extend out into the sea one geographical mile [=4 English miles], or  $\frac{1}{15}$  degree of latitude, from the coast or from the farthest island or rock lying off shore and not permanently covered by water.

By said navigable waters are meant in this treaty:

*Kattegat*, bounded on the north by a straight line drawn from the northernmost point of Skagen to Vinga lighthouse, thence to the nearest coast of Hisingen, and on the south by a straight line drawn from Hasenöre to Gniben and from Kullen to Gilbjerghoved.

The Sound, reckoned from Kullen-Gilbjerghoved on the north to Falsterbo-Stevens on the south.

The Baltic: The navigable waters along the Swedish coast from Falsterbo to Simbrishamn, as well as around Bornholm and Kristiansö.

Nevertheless Swedish fishermen shall be allowed to fish at Anholt Island a distance of  $\frac{3}{4}$  geographical mile [=3 English miles] from the coasts of said island, and Danish fishermen shall be allowed to fish a like distance beyond a straight line drawn from Hallands Väderös lighthouse to Tylö lighthouse.

Art. II. In the Sound fishing shall be allowed everywhere to the subjects of both countries without distinction, provided, however, that on the shores on each side of the Sound within a depth of 7 meters the subjects of the other country shall not engage in any fishing except for herring with nets. Likewise, on the coasts of Bornholm and Kristiansö, as well as on the Swedish coasts from Falsterbo to Simbrishamn, herring fishing with drift nets shall be allowed to subjects of both countries from May 1 till August 31.

To owners of shores and fishing rights are reserved the special privileges which may belong to them according to the laws and constitution of either country.

Art. III. The fishermen of both countries shall be allowed, without encroaching on private rights and observing the customs regulations as well as

dylika bestämmelser, ej mindre i Öresund än äfven å de enligt Art. I hvardera landet förbehållna fiskeområdena fritt färdas och ankra.

ART. IV. Vid fiskets bedrifvande skola båda ländernas fiskare iakttaga att, sedan någon intagit en fiskeplats och behörigen utmärkt sin redskap, han icke må, så länge han har sin redskap behörigen utmärkt och begagnar densamma till fiske, utträngas derifrån eller lida intrång i sitt fiske af andra fiskare.

Sättes eller drifver fiskredskap på annan mans behörigen utmärkta redskap, eller drages not (vad) så, att behörigen utmärkt redskap skadas, skall dennes egare hafva rätt till ersättning af den, som tillfogat honom sådan skada, så framt icke skadan skett genom nödtvång eller annan orsak, som ej kan tillräknas denne.

För att redskap skall anses vara behörigen utmärkt, skola följande regler vara iakttagna:

1) *Bottengarn, ålhommesätt* ("ålestader"), *räkru-sor, strandsätt för lax* och annan dylik redskap, som är fästad vid pålar, skall vid hufvudpålen eller den yttersta pålen vara försedd med en mörk flagg, som når minst en och en half meter öfver vattnet.

2) *Ryssjor* (hommor), som icke äro fästade vid pålar, skola, när de sättas spridda, hvar för sig vara utmärkta med en upprättstående stake utan topptecken, hvilken räcker minst tolf decimeter öfver vattnet. Utsättas ryssjorna (hommorna) i rad, kan afmärkningen inskränkas till en sådan stake för de två yttersta ryssjorna i raden och en boj eller mindre stake för hvar och en af de öfriga ryssjorna.

*Tinor* skola vara utmärkta genom en flytande träklabb.

3) För *annan faststående redskap*, vare sig densamma är bottensatt eller flyter närmare ytan, skall vid hvardera ändan af länken anbringas en stake, med eller utan tunna, hvars topp räcker minst tolf decimeter öfver vattnet och är utmärkt med en flagga, tre decimeter i fyrkant, för den ända af länken, som står i kompassens östliga halfcirkel (från norr genom ost till syd), samt två trekantiga, tre decimeter långa flaggor för den ända, som står i kompassens västliga halfcirkel (från syd genom vest till norr). Mellan dessa märken skall anbringas en mindre stake utan topptecken eller en boj för minst hvar nio hundra fyrtionde meter.

4) *Snurrevadar* (strykvadar och drifvadar) skola vid notpåsen eller kalfven (kilen) vara försedda med bojlina samt en svartmålad kage eller boj utan topptecken. Vid fiske med snurrevad skall

other similar regulations in force, to navigate freely and to anchor both in the Sound and the fishing regions reserved in accordance with Article I to each country.

ART. IV. In engaging in fishing the fishermen of both countries must remember that, when a fishing ground has been taken up and the tackle is properly marked, the occupant is not to be driven away or suffer any encroachment in his fishing by other fishers as long as his tackle is properly marked and he uses it for fishing.

If fishing tackle is placed or drifts upon the properly marked tackle of another fisherman, or if a seine is so dragged as to injure properly marked tackle, the owner of such tackle shall be entitled to damages from the person who has caused him such injury, provided the damage was not caused by unavoidable necessity or other cause which can not be attributed to such owner.

In order that tackle may be considered as being properly marked, the following rules must be observed:

1. Bottom nets, eel traps (alhommesätt), shrimp traps (räkrusor), shore weirs (strandsätt) for salmon, and other similar tackle fastened with poles, must have attached to the principal pole or the outermost pole a dark flag reaching at least 1½ meters above water.

2. Lobster traps (hommor) which are not fastened with poles shall, when they are set out, each be designated by an upright stake without top mark, reaching at least 12 decimeters above water. If the traps are set out in a row, the marking can be limited to such a stake for the two outermost baskets in the row and a buoy or lesser stake for each of the other baskets.

Single pots should be marked by a floating log.

3. In the case of other stationary tackle, whether it be laid on the bottom or float nearer the surface, there shall be a stake at each end, with or without cask, the top of which shall reach at least 12 decimeters above water and be marked with a flag 3 decimeters square, at the end of the chain situated in the eastern semicircle of the compass (from north through east to south), and two triangular flags 3 decimeters long at the end situated in the western semicircle of the compass (from south through west to north). Between these marks there shall be placed a lesser stake without top mark, or a buoy, at least every 914 meters.

4. Seines (snurrevadar) and drift nets (drifvadar) must be provided, at the bag or cod, with a buoy line and a black-painted keg or buoy without top mark. In fishing with a seine a stake with

från fartyget vara utsatt en stake med blå flagg i den rigtning, hvori vaden är utsatt.

5) *Drifvande eller svajande redskap* skall vid den fasta ändan af länken, som är förankrad vid botten eller fastgjord vid båten, utmärkas med en boj utan stake, samt vid den fria ändan med en boj med stake, som räcker minst tolf decimeter öfver vattnet.

Drifvande redskap skall, när fisket sker i Öresund, om natten föra en hvit lantern på denna stake; svajande redskap skall föra en trekantig flagg.

6) Inga fiskemärken, utom de i 1) nämnda, må räcka högre öfver vattnet än en och en half meter.

ART. V. Det i Art. IV nämnda skydd för faststående redskap gäller beträffande omkring Bornholm och Kristiansö utsatta laxlinor eller laxrefvar endast från och med den 1 Oktober till den 1 April.

ART. VI. Artiklarna IV och V hafva afseende å farvatten utanför de hvardera landet förbehållna fiskeområdena samt jemväl å de platser, der fiske enligt Art. II är gemensamt för begge rikenas undersåtar.

ART. VII. Öfverträdelse af de i artikel IV gifna föreskrifter skola, för såvidt de angå handlingar begångna utanför det hvardera landet förbehållna fiskeområdet, äfvensom i Öresund på större afstånd än en geografisk mil från närmaste land, ö eller skär, som icke ständigt öfversköljes af vatten, straffas med böter från och med tio till och med tvåhundra kronor.

ART. VIII. Öfverträdelse, som i artikel VII omförmålas, åtalas och afdomas i det land, hvartill den skyldiges fartyg hör.

ART. IX. De farkoster, som idka fiske i de farvatten, denna öfverenskommelse omfattar, skola vara tydligt märkta med nummer och stationsmärke, såväl å skrovet som å storseglet.

ART. X. De båda ländernas regeringar förpligta sig att underrätta hvarandra om de åtgärder, som vidtagas för tillsynen öfver efterlefnaden af de i denna öfverenskommelse meddelade bestämmelser.

ART. XI. Denna konvention skall träda i kraft genast efter det ratifikationerna utvexlats och förblifva gällande intill dess sex månader förflutit från den dag, då endera af de höga parterna uppsagt densamma.

Till bekräftelse häraf hafva de respektive fullmäktige undertecknat denna konvention och försett densamma med sina sigill.

Som skedde uti två exemplar i Stockholm den 14 Juli 1899.

blue flag shall be set out from the boat in the direction in which the seine is set out.

5. Drifting or swinging tackle shall, at the fast end of the chain which is anchored on the bottom or fastened to a boat, be designated with a buoy without stake, and at the free end by a buoy with stake, reaching at least 12 decimeters above water.

Drifting tackle shall, when the fishing is done in the Sound, be provided at night with a white lantern on this stake; swinging tackle shall carry a triangular flag.

6. No fishing marks, except those mentioned under No. 1 above, shall reach higher than 1½ meters above water.

ART. V. The protection to stationary tackle mentioned in Article IV applies to salmon fish-lines placed out around Bornholm and Kristiansö only from October 1 to April 1.

ART. VI. Articles IV and V relate to the navigable waters beyond the fishing regions reserved for each country, as well as to the places where fishing is permitted alike to the subjects of both countries in accordance with Article II.

ART. VII. Violations of the provisions of Article IV shall, if committed outside the fishing regions reserved to each country, or in the Sound over four geographical miles from the nearest land, island, or rock not constantly covered by water, be punishable by a fine not less than 10 and not exceeding 200 crowns.

ART. VIII. Violations as mentioned in Article VII shall be prosecuted and punished in the country to which the boat of the guilty party belongs.

ART. IX. Vessels which engage in fishing in the navigable waters embraced in this convention shall be distinctly marked with a number and station mark, both on the hull and on the mainsail.

ART. X. The governments of both countries pledge themselves to inform each other of the measures adopted for the purpose of insuring the observance of the provisions contained in this convention.

ART. XI. The present convention shall go into force immediately after the exchange of ratifications and shall remain in force until six months after one of the high contracting parties has repudiated it.

In witness whereof the respective plenipotentiaries have signed this Convention and affixed thereto their seals.

Done in two copies at Stockholm, on the 14th day of July, 1899.

## PROKOLL.

## PROTOCOL.

1. Till närmare bestämmande af den enligt art. X af den mellan H. M. Konungen af Sverige och Norge och H. M. Konungen af Danmark denna dag afslutade fiskerikonvention förutsatta tillsynen öfver konventionsbestämmelsernas efterlefnad hafva, efter dertill af regeringarne lemnadt bemyndigande, undertecknade, jemte förklarande att det ena landets fiskeritillsyn ej må sträckas in på det andra landets område, eller å farvatten, som ligger utanför det hvardera landet förbehållna fiskeområdet, utöfvas mot andra än landets egna undersåtar, vidare afgifvit följande särskilda förklaringar.

Svenska regeringen förklarar sig vilja dels anbefalla vederbörande länsstyrelser förständiga sina underordnade att hålla noggrann uppsigt öfver att de i konventionens särskilda artiklar gifna bestämmelser icke af enskilde öfverträdas, dels ock söka, i den mån förhållandena det medgifva, bereda ytterligare anordningar för öfvervakande af att konventionens föreskrifter varda af de svenske undersåtarne vederbörligen iakttagna, och svenska regeringen har för sådant ändamål särskildt tänkt sig, att den kanonbåt, som under höst- och vintermånaderna plägar vara stationerad vid bohuslänska kusten, skulle kunna beordras att, då dess närvaro derstädes under dessa månader ej erfordras, och omständigheterna i öfrigt derför ej lägga hinder i vägen, besöka de i konventionen afsedda fiskeområdena för att utöfva ifrågavarande fiskeritillsyn, eller ock att, i den mån nödiga medel af Riksdagen anvisas, samma eller annan kanonbåt skulle äfven under andra tider af året för ändamålet användas.

Danska regeringen förklarar sig vilja träffa de för öfvervakande af konventionens bestämmelser och med hänsyn till polistillsynen nödvändiga åtgärder.

2. Vidare hafva undertecknade, dertill vederbörligen bemyndigade, öfverenskommit, att, derest mellan de kontraherande magterna meningsskiljaktigheter om tolkningen eller tillämpningen af konventionen uppstå och dessa icke kunna genom diplomatiska förhandlingar utjemnas, desamma skola hänskjutas till skiljedom.

Till yttermera visso hafva undertecknade underskrifvit detta protokoll i tvenne lika lydande exemplar och bekräftat detsamma med sina sigill, som skedde i Stockholm den 14 Juli 1899.

## DEKLARATION.

Hans Majestät Konungen af Sverige och Hans Majestät Konungen af Danmark hafva bemyndigat undertecknade att afgifva följande deklARATION:

1. In order to determine more precisely the vigilance to be exercised, for insuring the observance of the provisions of the fishery convention concluded this day between H. M. the King of Sweden and Norway and H. M. the King of Denmark, in accordance with Article X of said convention, the undersigned, being empowered for the purpose by their Governments, have declared that the supervision over fishery exercised by one country shall not extend over the territory of the other country nor be exercised against the subjects of the other country on the navigable waters lying outside the fishing regions reserved to each country, besides which they have made the following special declarations:

The Swedish Government declares its willingness to order the respective district governments to exercise strict vigilance to prevent violation of the various provisions of the convention by private individuals, and it will endeavor, to the extent that circumstances permit, to prepare further regulations for the purpose of insuring the due observance of the provisions of the convention by Swedish subjects, for which purpose it has particularly deemed that the gunboat usually stationed during the fall and winter months along the coast of Bohuslän might be ordered, when its presence there during these months is not required and when other circumstances do not oppose, to visit the fishing regions set off in the convention in order to exercise the necessary vigilance over the fishing, or else, to the extent that the necessary funds may be provided by the Parliament, that the same or another gunboat might be employed for the purpose even during other seasons of the year.

The Danish Government declares itself willing to take the necessary steps to execute the provisions of the Convention and to maintain police supervision.

2. The undersigned, duly authorized, have furthermore agreed that in case of diversity of opinion between the contracting powers as to interpretation or execution of the provisions of the Convention, when such diversity can not be adjusted by diplomatic measures, the matter shall be submitted to arbitration.

In witness whereof the undersigned have signed this protocol in two copies and affixed their seals on same.

Done at Stockholm on the 14th day of July, 1899.

## DECLARATION.

His Majesty the King of Sweden and His Majesty the King of Denmark have authorized the undersigned to make the following declaration:

ART. I. Art. II af den under den 14 juli 1899 i Stockholm afslutade konvention angående fiskeriförhållandena i de till Sverige och Danmark gränsande farvattnen erhåller följande förändrade lydelse:

I Öresund skall fiske allestädes vara tillåtet för båda ländernas undersåtar utan åtskillnad, dock med den inskränkning att vid stränderna å ömse sidor Sundet innanför ett djup af sju meter det andra landets undersåtar icke må drifva annat fiske än sillfiske med garn. Såsom drifgarn vid sillfiske få endast *närdingar* användas. Utanför den nämnda sjumetersgränsen i Öresund är allt slags fiske med trawl och vad förbjudet.

På Middelgrundet är det likväl tillåtet att begagna agnnot. Med agnnot förstås sådan not, å hvilken armarnas längd tillsammans icke öfverskrider  $7\frac{1}{2}$  meter (4 famnar).

Vid Bornholms och Kristiansös kuster samt vid svenska kusten från Falsterbo till Simrishamn skall sillfisket med drifgarn vara gemensamt för båda ländernas undersåtar från den 1 maj till den 31 augusti.

Strand- och fiskrättsägare förbehållas de särskilda rättigheter, som dem jämlikt hvardera landets lagar och författningar kunna tillkomma.

ART. II. Rödspätta, som i totallängd icke håller  $25\frac{1}{2}$  centimeter (21 centimeter från nospetsen till stjärtroten), må ej finnas ombord i fartyg eller båt, som befinner sig i Kattegatt med dess vikar och fjordar på fiske eller för fiskhandel, och ej heller vid kusterna af Kattegatt med dess vikar och fjordar föras i land, hållas till salu eller utbjudas, säljas eller från ort till annan forslas, utan skall sådan rödspätta, därest den varder vid fiske upptagen i farkost eller på land, snarast och så vidt möjligt i oskadadt tillstånd i hafvet åter utsläppas.

För Öresund gälla samma bestämmelser, dock må, med undantag för det till städerna — å svenska sidan Hälsingborg, Landskrona och Malmö, å danska sidan Helsingör och Köpenhamn — hörande vatten- och landområde, i Sundet fångad rödspätta, som i totallängd håller minst 21 centimeter (17 centimeter från nospetsen till stjärtroten), finnas ombord och föras i land för att förbrukas inom någon af de Öresunds kuster närmast belägna kommuner.

ART. III. Denna deklaration träder i kraft den 1 november 1907.

Till bekräftelse häraf hafva undertecknade underskrifvit denna öfverenskommelse och försett densamma med sina sigill.

Som skedde i Stockholm i två exemplar den 5 oktober 1907.

ART. I. Article II of the convention concluded at Stockholm on July 14, 1899, regarding fishery relations in the navigable waters bordering on Sweden and Denmark, is modified so as to read as follows:

In the Sound fishing shall everywhere be allowed the subjects of both countries without distinction, provided, however, that on the shores on both sides the Sound within a depth of 7 meters the subjects of the other country shall not engage in any other fishing than herring fishing with nets. Only "*närdingar*" may be used as drift nets in herring fishing. Outside the aforementioned 7-meter limit in the Sound all kinds of fishing with trawls or seines is forbidden.

On the Middle Ground (Middelgrund) the use of bait-nets shall also be permitted. As bait-nets are included nets in which the length of the arms does not exceed altogether  $7\frac{1}{2}$  meters (4 fathoms).

On the coasts of Bornholm and Kristiansö, as well as on the Swedish coast from Falsterbo to Simrishamn, herring fishing with drift nets shall be permissible to the subjects of both countries from May 1 to August 31.

Owners of shores and fishing rights shall retain the privileges to which they are entitled under the laws and constitutions of each country.

ART. II. Plaice which do not measure  $25\frac{1}{2}$  centimeters in total length (21 centimeters from tip of nose to base of tail) must not be found on board any vessel or boat engaged in fishing or in dealing in fish in the Kattegatt, its coves or fjords, nor shall they be imported on the coasts of the Kattegatt, its coves or fjords, or be kept for sale or offered for sale or sold, or conveyed from one place to another, but such plaice when caught while fishing, from a boat or from shore, shall be thrown back into the sea as soon as possible and as far as possible unhurt.

The same rules apply to the Sound; nevertheless, with the exception of the adjacent water and land at Hälsingborg, Landskrona, and Malmö on the Swedish side and Helsingör and Köpenhamn on the Danish side, plaice caught in the Sound and measuring at least 21 centimeters in total length (17 cm. from tip of nose to base of tail), will be allowed on board and may be imported for consumption in some of the communes lying nearest the coasts of the Sound.

ART. III. This declaration goes into effect November 1, 1907.

In witness whereof the undersigned have signed this agreement and affixed thereto their seals.

Done at Stockholm in two copies on the 5th day of October, 1907.

## DISCUSSION.<sup>a</sup>

Mr. OLSEN. I have listened with very great interest to this excellent paper. A better one I do not think we shall be able to hear in this assembly, for it touches the chord of everything that affects the regulations of the fisheries on the high seas. With regard to Moray Firth, which the speaker referred to, I am sorry to stand here and confess that we have to-day about thirty English steam trawlers sailing under foreign flags, for the simple purpose of poaching in the Moray Firth. It seems to me disgraceful that such things should be done; but, on the other hand, it is quite right that the Moray Firth should be open to trawling, inasmuch as the 3-mile limit is considered and that the bay which they have drawn the line across is something like 90 miles in width, contains a great area of water, and that that piece of water is open to all nations, according to the convention of 1882. The poaching (I can not call it anything else) is certainly a very mean way of trying to avoid the law by putting the vessel under another flag. Such things I have personally objected to. This bone of contention, trawling in the Moray Firth, is a thing that the British Government can not legally enforce nor prevent, for it is not the property of the British nation, since it was agreed to in the convention of the contracting parties. It belongs to the convention only to police, and not to one country. I think it impossible either for this congress or for any other congress to induce the British Government to give up that piece of water. The only way I can conceive is that a tribunal, an international society, be formed for the purpose of adjusting all kinds of grievances respecting the fishery laws, etc., and that this society be able to so formulate the requirements as to bring it before the Government in question, with a lot of influence behind it to induce the home governments to legislate for the fishermen and all those engaged in the industry.

Mr. FRYER. Mr. President, ladies, and gentlemen, the very important diplomatic issues involved in the paper read before us just now, and especially in reference to the case of the Moray Firth in Scotland, are so serious that I feel I can not properly deal with them in the short space of time at our disposal this morning; but I think that one little explanation is necessary on the point of the apparently doubtful position which the United Kingdom has assumed in regard to jurisdiction beyond the 3-mile limit.

The facts are as stated in the paper; but one simple point was omitted, and that is in reference to the peculiar position of the boat against which the proceedings in the case referred to were taken. The justification for the apparent exercise of sovereign rights over a foreign vessel at a distance of more than 3 miles from low-water mark was found in the fact that this vessel was manned mainly by British subjects. The law in question was a domestic law; it was aimed at British subjects; and it was felt to be an improper thing that by the mere transfer of a ship from the British to a foreign flag, and by the employment of British subjects as fishermen, that vessel should be able to escape the purely domestic municipal law of the country which made it. This was the ground upon which the apparently inconsistent attitude of the British Government was justified and maintained in the high court in Scotland. The question has not reached its ultimate solution yet, but the position is so exceedingly delicate, and involves so many important diplomatic considerations—being, in point of fact, now the subject of diplomatic intercourse between the several nations of Europe which are fishing in this water—that I do not propose to enter further into it; especially seeing that, although I happen to be an

<sup>a</sup> As this paper was not read in full, the discussion pertains only to points treated in the abstract.

official of the British Government, I have no official authority here, and have no right to say anything in any way on behalf of my country, and I should hesitate to say a word which might be held to be anything like an official statement in the matter. However, I thought it necessary to point out that there was a reason for the apparently inconsistent attitude taken by my country in the premises.

With respect to one main question involved in the paper before us, namely, that the extension of the territorial limits was apparently necessary in order to give encouragement to the cultivation of the sea bed, in regard to such fisheries as those for shellfish, I would point out that the range covered by the existing limits is already sufficiently wide, without going further afield and giving proprietary rights beyond the 3-mile line. There are very few cases in which fisheries for shellfish, especially, are carried on to such an extent as to justify any proposal for placing any wider area of the sea bed under proprietary jurisdiction.